

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WAUSAU UNDERWRITERS INSURANCE
COMPANY and AXIS SPECIALTY INSURANCE
COMPANY,

Plaintiffs,

- against -

QBE INSURANCE COMPANY and
SCOTTSDALES INSURANCE COMPANY,

Defendants.
-----X

INDEX NO.: 06 CV 3212 (VM)

**AFFIDAVIT
IN SUPPORT
OF CROSS-MOTION**

ECF CASE

WILLIAM H. BAVE, JR. being duly sworn deposes and states:

1. I am a partner with the law firm of Wilson, Bave, Conboy, Cozza & Couzens, P.C. attorneys for Defendant, ***QBE INSURANCE COMPANY ("QBE")*** and am fully familiar with the facts of this case.

2. This affidavit is in support of ***QBE'S*** cross-motion for summary judgment and in opposition to Plaintiff's motion seeking a declaration that ***QBE*** provide a defense to Barney Skanska Construction Co. ("***SKANSKA***") and New York Economic Development Corp. ("***NYCEDC***") in the underlying action of ***John Moore v. New York City Economic Development Corp., New York City Department of Transportation, Barney Skanska Construction Co., and Kel-Tech Construction, Inc.***, and a third-party action captioned ***New York City Economic Development Corp., New York City Department of Transportation, and Barney Skanska Construction Co. v. Arena Construction Co., Inc.*** pending in New York County State Supreme Court, Richmond County.

3. Plaintiff, ***WAUSAU UNDERWRITERS INSURANCE COMPANY*** ("***WAUSAU***") is the insurance carrier for Owen Steel Co., Inc. ("***OWEN***") who was the steel contractor on the project. ***OWEN*** subcontracted the work to John Moore's employer, A.J.

McNulty ("**McNULTY**") who was insured by Plaintiff, **AXIS SPECIALTY INSURANCE CO.** ("**AXIS**"). Barney Skanska Construction Co. ("**SKANSKA**") was the Construction Manager of the project. The insurance carrier for **SKANSKA** is not known by Defendant. The Defendant also does not possess a copy of the contract for **SKANSKA**. Despite seeking relief for **SKANSKA** in this motion, Plaintiff has not provided the insurance policy or contract so it could be determined the obligations of **SKANSKA** under its contract and the insurer under its policy for the underlying action.

4. Discovery other than automatic disclosure pursuant to Rule 26 has not been conducted. Attached as **EXHIBIT "A"** is Plaintiff's response to automatic disclosure. Rule 26(a)(1)D requires inspection and copying of "any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."

5. The complaint in the underlying action alleges that **SKANSKA** was the Construction Manager for the project and as such assumed non-delegable duties under the Labor Law of the State of New York. Plaintiff in the underlying action alleges that he fell through an unguarded opening sustaining injuries. The Labor Law imposes a non-delegable duty on the Construction Manager to guard openings through which workers can fall.

6. **WAUSAU** and **AXIS** made a decision to defend and if necessary indemnify **NYCEDC** and **SKANSKA** since they are represented by the same law firm in the underlying action. (See appearances on deposition of John Moore, **EXHIBIT "B"**).

7. From the fact that **WAUSAU** and **AXIS** are Co-Defendants insuring different contractors represented by the same attorney it can be assumed that they have reached some accommodation between themselves as to payment of defense costs, indemnification and priority of coverage.

8. The attorneys for *NYCEDC* and *SKANSKA* commenced a third-party action against Arena Construction Co., Inc. The Plaintiffs in this action brought suit against Scottsdale Insurance Company, Arena's insurance carrier alleging that *NYCEDC* and *SKANSKA* are additional insureds on its policy. Arena provided masonry work on the project. Despite these allegations, Plaintiff's motion is not directed at Scottsdale but only *QBE*.

9. *QBE* insured *KEL-TECH*, a masonry contractor that entered into a take over agreement with *NYCEDC*. As stated in the affidavit of its project manager it was not working in the area where the Plaintiff in the underlying action claims (John Moore) he sustained an injury (Aff. of Thomas Lyons, *EXHIBIT "C"*). *KEL-TECH* has no Labor Law non-delegable duty toward John Moore since it did not employ him, supervise or control his work.

10. Plaintiff, *WAUSAU*, tendered the defense of *NYCEDC* and *SKANSKA* in correspondence dated December 13, 2004 and received by Defendant on December 17, 2004 (*EXHIBIT "D"*). Defendant, *QBE*, through its third-party administrator, Claims Service Bureau, denied the tender of defense and indemnification. Two grounds were stated; late notice of occurrence and the accident did not arise from *KEL-TECH'S* work (*EXHIBIT "E"*). There is no allegation that notice of disclaimer was untimely.

11. Plaintiff argues that Defendants' affirmative defense refers to claim or suit and not occurrence. Plaintiff was clearly on notice from the December 28, 2004 letter that Defendant was disclaiming for late notice of the occurrence as admitted by Mr. Morrissiey in paragraph 28 of his affidavit. While not employing the precise word "occurrence", Plaintiff's argument that it is waived is without merit. This is not a defense that is waived if not raised. FRCP Rule 12(h) In any event it was raised in the answer and in the initial submission joint letter (*EXHIBIT "F"*).

12. As more fully discussed in the memorandum of law, failure to provide notice as soon as practicable is a basis to deny coverage to an insured. The rule applies with equal effect to additional insureds.

13. By its own admission, *WAUSAU* was aware of the claim on September 27, 2004. There is no indication of any efforts made by *WAUSAU* to investigate the claim other than to blame *NYC EDC* for the delay in notifying *QBE* of the occurrence. This failure to document any effort would indicate that none was undertaken. Plaintiff's submission on this issue does not begin to adequately explain the delay in notifying *QBE* of the occurrence.

14. The affidavit of Thomas Lyons (Exhibit C), project manager for *KEL-TECH* establishes the fact that *KEL-TECH* had not worked in the area where Mr. Moore claims the accident occurred for almost two months. It also submits proof that an employee of *SKANSKA* demolished a portion of *KEL-TECH'S* work and moved the planking in the elevator shaft that Moore fell down.

15. The additional insured endorsement requires that in order to confer addition insured status on a person or organization, the liability must arise from *KEL-TECH'S* work for that insured which in this case is *SKANSKA*.

16. John Moore testified at his deposition (Exhibit B) that he was working for A.J. McNulty (p. 6)¹ on a crew of four or five men erecting columns and beams with the assistance of a crane (p. 16). The accident occurred as he stepped backwards on to a cinder block wall (p. 32). The wall started to crumble and he fell backwards through an open elevator shaft (p. 33). He fell approximately 2-1/2 floors (p. 36).

17. The testimony of Mr. Moore in conjunction with the affidavit of Mr. Lyons establishes that *KEL-TECH'S* work in the area had been substantially changed. The concrete

¹ () numbers refer to pages in John Moore's deposition

wall that Mr. Moore stepped on crumbled because **SKANSKA'S** employee demolished it. Mr. Moore fell through the opening of the elevator shaft because the **SKANSKA** employee moved the planks placed there by **KEL-TECH**.

18. **WAUSAU** and **AXIS** are seeking to shift the defense responsibility to the insurance carrier for a contractor (**KEL-TECH**) that bears no responsibility for the area where the accident occurred. Nor did **KEL-TECH** supervise or otherwise direct John Moore's work.

19. If the contract between **NYCEDC** and **SKANSKA** had been produced by the Plaintiff it would state that **SKANSKA** was required to name **NYCEDC** as an additional insured on its policy. If **SKANSKA'S** insurance policy was provided by Plaintiff, it would state that **SKANSKA** is required to defend **NYCEDC** in this action.

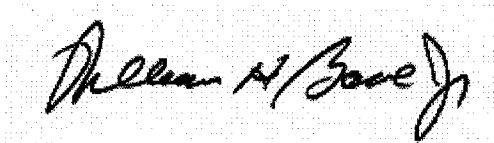
20. **ARENA** was a masonry contractor on this job who was working at the time of this accident and whose insurance policy names **SKANSKA** and **NYCEDC** as an additional insureds. Scottsdale's policy (**EXHIBIT "H"**) contains an additional insured endorsement which provides that the insurance provided to the additional insured is primary in the event of a finding that **ARENA** is solely responsible for the occurrence. It is respectfully submitted that, if the limiting language in the **QBE** endorsement does not prevent **QBE** from a duty to defend as Plaintiff argues, Scottsdale should likewise be required to defend **NYCEDC** and **SKANSKA** for this occurrence.

21. It is respectfully submitted that there is no issue of fact as to Plaintiff's failure to provide notice to Defendant as soon as practicable. As a result, Defendant is entitled to judgment on its cross-motion for summary judgment against **SKANSKA**.

22. Defendant also submits that the law of New York is not settled as to the issue of when and under what circumstances an additional insured endorsement is triggered to provide coverage. The law in the Second Judicial Department where the underlying action is pending

requires that before the endorsement is triggered the occurrence must arise from the work of the contractor providing the additional insured coverage.

23. Since the occurrence did not arise from **KEL-TECH'S** work there is no coverage for **NYCEDC** under Defendant's insurance policy.



WILLIAM H. BAVE, JR.

Sworn to before me this
9th day of November, 2006

Yesica Manon
NOTARY PUBLIC

YESICA MANON
Notary Public, State of New York
No. 01MA6135821
Qualified in Bronx County
Commission Expires 10/24/20 09

EXHIBITS

- Exhibit "A" Plaintiff's Response to Automatic Discovery
- Exhibit "B" Deposition of John Moore
- Exhibit "C" Affidavit of Thomas Lyons
- Exhibit "D" Wausau tender letter dated December 13, 2004
- Exhibit "E" CSB letter dated December 28, 2004
- Exhibit "F" Initial submission joint letter
- Exhibit "G" John Moore 50(h) testimony
- Exhibit "H" Scottsdale policy
- Exhibit "I" Accident report prepared by Barney Skanska USA
- Exhibit "J" A.J. McNulty Accident report

Renewal of Number
BCS0005680

Policy Number
BCS0008003

 **SCOTTSDALE INSURANCE COMPANY®**

Home Office:
One Nationwide Plaza - Columbus, Ohio 43215
Administrative Office:
8877 North Gainey Center Drive, Scottsdale, Arizona 85258
1-800-423-7675 (outside Arizona)
A STOCK COMPANY

COMMON POLICY DECLARATIONS

Item 1. Named Insured and Mailing Address

ARENA CONSTRUCTION COMPANY,
INC.
45 KNOLLWOOD RD
ELMSFORD NY 10523

Agent Name and Address

CRC INSURANCE SERVICES INC
80 BROAD ST 25TH FL
NEW YORK NY 10004

Agent No. 31729



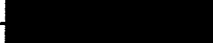
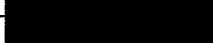
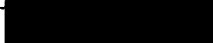
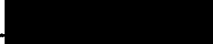
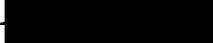
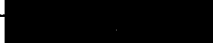
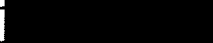


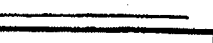

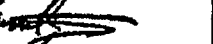
Program No.: NONE

Item 2. Policy Period From: 05-03-04 To: 05-03-05 Term: 1 Year
12:01 A.M., Standard Time at your mailing address

**BROKERAGE
CASUALTY**

Business Description: GENERAL CONTRACTOR

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy. This policy consists of the following coverage parts for which a premium is indicated. Where no premium is shown, there is no coverage. This premium may be subject to adjustment.

Coverage Part(s)	Premium
Commercial General Liability Coverage Part	\$ 
Commercial Property Coverage Part	\$ 
Commercial Crime Coverage Part	\$ 
Commercial Inland Marine Coverage Part	\$ 
Commercial Auto (Business Auto or Truckers) Coverage Part	\$ 
Commercial Garage Coverage Part	\$ 
Professional Liability Coverage Part	\$ 
	\$ 
	\$ 
	\$ 
	\$ 
Total Policy Premium	\$ 
	\$ 
	\$ 

Form(s) and Endorsement(s) made a part of this policy at time of issue:

See Schedule of Forms and Endorsements



THIS COMMON POLICY DECLARATION AND THE SUPPLEMENTAL DECLARATION(S), TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART(S), COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, COMPLETE THE ABOVE NUMBERED POLICY.

OPS-D-1 (12-00)

COMPANY ISSUED

Home Office Copy

POLICY



SCOTTSDALE INSURANCE COMPANY®

COMMERCIAL GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

Item 1. Limits of Insurance

Coverage	Limit of Liability	
Aggregate Limits of Liability	\$ 1,000,000	Products/Completed Operations Aggregate
	\$ 2,000,000	General Aggregate (other than Products/Completed Operations)
Coverage A - Bodily Injury and Property Damage Liability Damage To Premises Rented To You	\$ 1,000,000	any one occurrence subject to the Products/Completed Operations and General Aggregate Limits of Liability
	\$ 100,000	any one premises subject to the Coverage A occurrence and the General Aggregate Limits of Liability
Coverage B - Personal and Advertising Injury Liability	\$ 1,000,000	any one person or organization subject to the General Aggregate Limits of Liability
Coverage C - Medical Payments	\$ 5,000	any one person subject to the Coverage A occurrence and the General Aggregate Limits of Liability

Item 2. Form of Business and Location of Premises

Form of Business: GENERAL CONTRACTOR

☐ Individual ☐ Partnership ☐ Joint Venture ☐ Trust ☐ Limited Liability Company

☒ Organization including a corporation (other than Partnership, Joint Venture or Limited Liability Company)

Location of All Premises You Own, Rent or Occupy:

See Schedule of Locations

Item 3. Forms and Endorsements

Form(s) and Endorsement(s) made a part of this policy at time of issue:

See Schedule of Forms and Endorsements

Item 4. Premiums

Coverage Part Premium:

\$

Other Premium:

\$

Total Premium:

\$

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.



SCOTTSDALE INSURANCE COMPANY®

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
EXTENSION OF SUPPLEMENTAL DECLARATIONS**

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

Prem. No. 001	Bldg. No.	Class Code 91341	Exposure \$ 100,000	Basis PAYROLL/NEAREST THOUSAND	
Class Description: CARPENTRY - INTERIOR				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No. 001	Bldg. No.	Class Code 91580	Exposure \$ 100,000	Basis PAYROLL/NEAREST THOUSAND	
Class Description: CONTRACTORS - EXECUTIVE SUPERVISORS OR EXECUTIVE SUPERINTENDENTS (PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT)				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No. 001	Bldg. No.	Class Code 91585	Exposure \$ 4,200,000	Basis TOTAL COST/NEAREST THOUSAND	
Class Description: CONTRACTORS - SUBCONTRACTED WORK - IN CONNECTION WITH CONSTRUCTION, RECONSTRUCTION, REPAIR OR ERECTION OF BUILDINGS				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code 49950	Exposure	Basis	
Class Description: ADDITIONAL INTEREST: BLANKET GLS-210S W/OPTION B				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium

R3S-1/21/2005 9:52:00 AM

MCH-Fri May 21 10:08:05 2004



SCOTTSDALE INSURANCE COMPANY®

COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

Prem. No.	Bldg. No.	Class Code 49950	Exposure	Basis	
Class Description: ADDITIONAL INTEREST: BLANKET WAIVER				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code 73444	Exposure	Basis	
Class Description: EMPLOYEE BENEFITS				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium



SCOTTSDALE INSURANCE COMPANY®

SCHEDULE OF FORMS AND ENDORSEMENTS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

COMMON POLICY FORMS AND ENDORSEMENTS

OPS-D-1	12-00	COMMON POLICY DECLARATIONS
UTS-SP-2L	12-95	SCHEDULE OF FORMS & ENDORSEMENTS
UTS-SP-3	08-96	SCHEDULE OF LOCATIONS
IL 00 17	11-98	COMMON POLICY CONDITIONS
IL 00 23	04-98	NUCLEAR ENERGY LIABILITY EXCLUSION ENDT.
UTS-74G	08-95	PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION
UTS-9G	05-96	SERVICE OF SUIT CLAUSE
UTS-COVPG	10-03	COVER PAGE

GENERAL LIABILITY FORMS AND ENDORSEMENTS

CLS-SD-1L	08-01	COMMERCIAL LIABILITY COVERAGE PART DEC
CLS-SP-1L	10-93	GENERAL LIABILITY COVERAGE PART-EXT.
CG 00 01	10-01	COMMERCIAL GENERAL LIABILITY COV FORM
CG 00 62	12-02	WAR LIABILITY EXCLUSION
CG 21 47	07-98	EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG 21 54	01-96	EXCL - DESIGNATED OPERATIONS
CG 21 55	09-99	TOTAL POLLUTION EXCL. WITH HOSTILE FIRE
CG 21 67	04-02	FUNGI OR BACTERIA EXCLUSION
CG 21 75	12-02	EXCL CERTIF ACTS OF TERRORISM & OTHR ACT
CG 22 79	07-98	EXCL-CONTRACTORS-PROF LIAB
CG 24 04	10-93	WAIVER-TRANS RIGHTS AGAINST OTHERS TO US
CG 25 03	03-97	DESIGNATED CONSTRUCTION PROJECTS GENERAL
CG 25 04	03-97	DESIGNATED LOCATIONS GENERAL AGGREGATE
GLS-136S	10-95	NOTICE OF OCCURRENCE
GLS-137S	10-95	KNOWLEDGE OF OCCURRENCE
GLS-148S	06-99	LIABILITY DEDUCTIBLE (PER OCC/OFF)
GLS-152S	12-96	AMENDMENT TO OTHER INS CONDITION
GLS-169S	08-97	EMPLOYEE BENEFIT LIABILITY
GLS-210S	04-99	ADDTL OWNERS-CONTRACTORS-OPTIONAL
GLS-30S	06-98	CONTRACTORS SPECIAL CONDITION
GLS-58S	12-93	LEAD CONTAMINATION EXCLUSION
GLS-74S	11-01	AMENDMENT OF CONDITIONS
UTS-131G	03-92	ASBESTOS EXCLUSION
UTS-291S	06-01	RESIDENTIAL EXCLUSION
GLS-226S	10-00	CONTRACTUAL LIABILITY - RAILROADS
GLS-230S	01-03	MIN AND ADV PREM/MIN EARNED CANCEL PREM
UTS-301G	07-02	SUBSIDENCE EXCL
UTS-72G	10-03	ENDT



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS SPECIAL CONDITIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following condition is added to **SECTION IV—COMMERCIAL GENERAL LIABILITY CONDITIONS** section of the policy:

CONTRACTORS SPECIAL CONDITIONS

You will obtain certificates of insurance from all independent contractors providing evidence of :

1. Limits of Insurance equal to or greater than the limits provided by this policy; and
2. Coverage equal to or greater than the coverages provided by this policy.

Failure to comply with this condition does not alter the coverage provided by this policy. However, should you fail to comply a premium charge will be made. This premium charge will be based on the "total cost" of all work sublet.

"Total cost" means the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work and all fees, bonuses or commissions paid.

AUTHORIZED REPRESENTATIVE_____
DATE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 03 03 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Projects:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under COVERAGE C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
- 4.** The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.



SCOTTSDALE INSURANCE COMPANY®

SCHEDULE OF LOCATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

Prem. No.	Bldg. No.	Designated Premises (Address, City, State, Zip Code)	Occupancy
001		45 KNOLLWOOD RD ELMSFORD, NY 10523-0000	
002		253 UTICE AVE BROOKLYN, NY 11213-0000	
003		29-42 NORTHERN BLVD LONG ISLAND CITY, NY 11101-0000	
004		230 WILLOW ST YONKERS, NY 10701-0000	



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of.

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION

In consideration of the premium charged, it is agreed that this policy does not apply to a claim of or indemnification for punitive or exemplary damages.

Punitive or exemplary damages also include any damages awarded pursuant to statute in the form of double, treble or other multiple damages in excess of compensatory damages.

If suit is brought against any insured for a claim falling within coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then the Company will afford a defense to such action; however, the Company will have no obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due under this policy, the Company at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give the Court jurisdiction. All matters which arise will be determined in accordance with the law and practice of the Court. In a suit instituted against any one of them under this contract, the Company agrees to abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

Pursuant to any statute of any state, territory or district of the United States of America which makes a provision, the Company will designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured (or reinsured) or any beneficiary arising out of this contract of Insurance (or reinsurance).

The officer named below is authorized and directed to accept service of process on behalf of the Company:

SUPERINTENDENT OF INSURANCE

EMPIRE STATE PLAZA, AGENCY BUILDING ONE

ALBANY, NY 12257

Having accepted service of process on behalf of the Company, the officer is authorized to mail the process or a true copy to:

AUTHORIZED REPRESENTATIVE

DATE

POLICY NUMBER: BCS0008003

COMMERCIAL GENERAL LIABILITY
CG 21 54 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - DESIGNATED OPERATIONS COVERED BY A
CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

ALL "WRAP-UP" PROJECTS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the

prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

POLICY NUMBER: BCS0008003

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

ANY PERSON OR ORGANIZATION THAT THE INSURED HAS AGREED
AND/OR IS REQUIRED BY CONTRACT TO WAIVE RIGHTS OF RECOVERY
AGAINST, PER SCHEDULE ON FILE WITH COMPANY

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

POLICY NUMBER: BCS0008003

COMMERCIAL GENERAL LIABILITY

CG 25 03 03 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Projects:

ALL PROJECTS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under COVERAGE C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

POLICY NUMBER: BCS0008003

COMMERCIAL GENERAL LIABILITY
CG 25 04 03 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):

ALL LOCATIONS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by -occurrences- under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to operations at a single designated -location- shown in the Schedule above:
1. A separate Designated Location General Aggregate Limit applies to each designated -location-, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of -bodily injury- or -property damage- included in the -products-completed operations hazard-, and for medical expenses under COVERAGE C regardless of the number of:
 - a. Insureds;
 - b. Claims made or -suits- brought; or
 - c. Persons or organizations making claims or bringing -suits-.
 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated -location-. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated -location- shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by -occurrences- under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to operations at a single designated -location- shown in the Schedule above:
1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Location General Aggregate Limit.
- C. When coverage for liability arising out of the -products-completed operations hazard- is provided, any payments for damages because of -bodily injury- or -property damage- included in the -products-completed operations hazard- will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D. For the purposes of this endorsement, the Definitions Section is amended by the addition of the following definition:
- Location- means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF OCCURRENCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 2. Duties in the Event of Occurrence, Offense, Claim or Suit of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

An "occurrence," or offense originally reported to your workers compensation carrier may later develop into a claim which may be covered by this policy. If you notify us as soon as practicable after you become aware that the "occurrence" or offense may result in a claim against this policy, you will not be deemed in violation of the reporting requirements of this condition.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

KNOWLEDGE OF OCCURRENCE

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 2. Duties in the Event of Occurrence, Offense, Claim or Suit of
SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

Knowledge of an "occurrence," offense, claim, or "suit" by the agent, servant or employee of any insured will not in itself constitute knowledge by the Named Insured unless an executive officer of the Named Insured's organization received such notice from its agent, servant or employee.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BODILY INJURY, PROPERTY DAMAGE, PERSONAL
AND ADVERTISING INJURY LIABILITY DEDUCTIBLE ENDORSEMENT
(Per Occurrence or Offense)**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	\$ 5000	per occurrence
Property Damage Liability	\$ 5000	per occurrence
Personal and Advertising Injury Liability (Personal In- jury and Advertising Injury)	\$ 5000	per offense

APPLICATION OF ENDORSEMENT

Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury," "property damage," and "personal and advertising injury," ("personal injury" and "advertising injury") however caused:

NO LIMITATION

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability ("Personal Injury" and "Advertising Injury") Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as

applicable to such coverages, and the Limits of Insurance applicable to Each Occurrence or offense for such coverages will be reduced by the amount of such deductible. Aggregate Limits for such coverages shall not be reduced by the application of such deductible amount.

2. The deductible amounts apply to damages and all legal and loss adjustment expenses.
3. The deductible amounts stated in the Schedule above apply:
 - a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
 - c. Under Personal and Advertising Liability ("Personal Injury" and "Advertising Injury") Coverage, to all damages because of "personal injury" or "advertising injury"

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as the result of any one "occurrence" or offense, regardless of the number of persons or organizations who sustain damages because of that "occurrence" or offense.

4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," offense, claim or "suit," apply.

irrespective of the application of the deductible amount.

5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us..

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SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT TO OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Condition 4. Other Insurance of SECTION IV -
COMMERCIAL GENERAL LIABILITY CONDITIONS is
deleted in its entirety and is replaced by the following:

4. Other Insurance

a. Primary Insurance

This insurance is primary except when b. below
applies.

b. Excess Insurance

This insurance is excess over any other insurance,
whether primary, excess, contingent or on any other
basis:

- (1) That is Fire, Extended Coverage, Builder's Risk,
Installation Risk or similar coverage for "your
work";
- (2) That is Fire insurance for premises rented to
you or temporarily occupied by you with per-
mission of the owner;
- (3) If the loss arises out of the maintenance or use
of aircraft, "auto" or watercraft to the extent not
subject to Exclusion g. of Coverage A (Section
I); or

- (4) That is valid and collectible insurance available
to you under any other policy.

When this insurance is excess, we will have no duty
under Coverages A or B to defend the insured
against any "suit" if any other insurer has a duty to
defend the insured against that "suit." If no other in-
surer defends, we will undertake to do so, but we will
be entitled to the insured's rights against all those
other insurers.

When this insurance is excess over other insurance,
we will pay only the amount of the loss, if any, that
exceeds the sum of:

- (1) The total amount that all such other insurance
would pay for the loss in the absence of this in-
surance; and
- (2) The total of all deductible and self-insured
amounts under all other insurance.

If a loss occurs involving two or more policies, each
of which states that its insurance will be excess,
then our policy will contribute on a pro rata basis.

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DATE

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SCOTTSDALE INSURANCE COMPANY® Attached to and forming a part of Policy No. BCS0008003 Named Insured ARENA CONSTRUCTION COMPANY,	ENDORSEMENT NO. _____ Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time Agent No. 31729
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE BENEFIT LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage	Limits of Insurance	Premium
Employee Benefits Programs	\$ <u>1,000,000</u> Each Employee \$ <u>1,000,000</u> Aggregate	\$ [REDACTED]

COVERAGE

1. Insuring Agreement

We will pay under this endorsement those sums that the "insured" becomes legally obligated to pay as damages because of any negligent act, error or omission of the "insured," or of any other person for whose acts the "insured" is legally liable. The negligent act, error or omission must be committed in the "administration" of your "employee benefit program" during the policy period. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS** of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM, CG 00 01**.

The negligent act, error or omission must take place in the "coverage territory." We will have the right and duty to defend any "suit" seeking those damages. But:

- a. The amount we will pay for damages is limited as described in the **LIMITS OF INSURANCE** section of this endorsement;
- b. We may at our discretion, investigate any report of a negligent act, error or omission and settle any claim or "suit" that may result; and

- c. Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

2. Exclusions

Insurance under this endorsement does not apply to:

- a. Loss arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any "insured";
- b. "Bodily injury," "property damage," "personal injury" or "advertising injury";
- c. Loss arising out of failure of performance of contract by any insurer;
- d. Loss arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program";
- e. Any claim or "suit" based upon:
 - (1) failure of any investment to perform as represented by any "insured";
 - (2) advice given to any person to participate or not to participate in any plan included in the "employee benefit program";

- f. Loss arising out of your failure to comply with the mandatory provisions of any law concerning workers compensation, unemployment insurance, social security, disability benefits or any similar law; or
- g. Loss for which the "insured" is liable because of liability imposed on a fiduciary by the Employee Retirement Security Act of 1974, as now or hereafter amended.

WHO IS AN INSURED

With respect to this endorsement only:

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are "insureds," but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an "insured." Your members, your partners, and their spouses are also "insureds," but only with respect to the conduct of your business.
 - c. A limited liability company, you are an "insured." Your members are also "insureds," but only with respect to the conduct of your business. Your managers are "insureds," but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture, or limited liability company, you are an "insured." Your directors and stockholders are also "insureds," but only with respect to their liability as your directors or stockholders.
2. Each of the following is also an "insured":
 - a. Your partners, executive officers, members, managers, and employees who are authorized to administer your "employee benefit program."
 - b. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this endorsement.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if

there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period whichever is earlier; and
- b. Coverage under this provision does not apply to any negligent act, error or omission that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Schedule of this endorsement and the rules below fix the most we will pay regardless of the number of:
 - a. "Insureds";
 - b. Claims made or "suits" brought;
 - c. Persons or organizations making claims or bringing "suits";
 - d. Acts, errors or omissions which result in loss; or
 - e. Plans included in your "employee benefit program."
2. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions committed in the "administration" of your "employee benefit program."
3. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one employee, including the employee's dependents and beneficiaries, because of acts, errors or omissions committed in the "administration" of your "employee benefit program."

The Limits of Insurance shown in the Schedule apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding

period for purposes of determining the Limits of Insurance.

DEFINITIONS

The following **DEFINITIONS** are added to the policy:

1. "Administration" means any of the following acts that you do or authorize a person to do:
 - a. Counseling employees, including their dependents and beneficiaries, with respect to the "employee benefit program"; or
 - b. Handling records in connection with the "employee benefit program"; or
 - c. Effecting or terminating any employee's participation in a plan included in the "employee benefit program."
2. "Coverage territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.
3. "Employee benefit program" means the following plans:
 - a. Group life insurance, group accident or health insurance, "profit sharing plans," pension plans, "stock subscription plans," vacation and savings plans, provided that no one other than an employee may subscribe to such insurance or plans; or
 - b. Unemployment insurance, social security benefits, workers compensation and disability benefits; or
 - c. Any other similar plan designated in the Schedule.
4. "Insured" means any person or organization qualifying as such under **WHO IS AN INSURED** section of this endorsement.
5. "Profit sharing plans" means only such plans that are equally available to all full time employees.

6. "Stock subscription plans" means only such plans that are equally available to all full time employees.

For the purposes of this endorsement, the definition of "suit" contained in the **DEFINITIONS** section of the policy is deleted in its entirety and is replaced with the following:

"Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding alleging such damages to which you must submit or submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

CONDITIONS

It is agreed that Item 2. **Duties In The Event Of Occurrence Offense, Claim Or Suit** paragraphs a. and b. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** are deleted for purposes of this endorsement and replaced with the following:

2. **Duties In The Event Of Act, Error Or Omission, Claim Or Suit.**
 - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. Notice should include:
 - (1) What the act, error or omission was and when it occurred; and
 - (2) The names and addresses of any employees who may suffer damages as a result of the act, error or omission.
 - b. If a claim is received by any "insured" you must:
 - (1) Immediately record the specifics of the claim and the date received; and
 - (2) Notify us as soon as practicable. You must see to it that we receive written notice of the claim as soon as practicable.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEAD CONTAMINATION EXCLUSION

This endorsement modifies insurance provided under:


COMMERCIAL GENERAL LIABILITY COVERAGE PART

This endorsement excludes "occurrences" at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; or from the operations of the insured, which result in:

- a. "Bodily Injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- b. "Property Damage" arising from any form of lead;
- c. "Personal Injury" arising from any form of lead;
- d. "Advertising Injury" arising from any form of lead;
- e. Medical Payments arising from any form of lead;
- f. Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead; or
- g. Any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead.

AUTHORIZED REPRESENTATIVE

DATE

	SCOTTSDALE INSURANCE COMPANY®	ENDORSEMENT NO. _____
Attached to and forming a part of Policy No. BCS0008003 Named Insured ARENA CONSTRUCTION COMPANY,		Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS
(WITH OPTIONAL COVERAGE PROVISIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

SEE BELOW

Who Is An Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only to the extent the additional insured is held liable for the Named Insured's negligent acts or omissions arising from occurrences directly caused by, and while in the course of the Named Insured's ongoing operations performed for that additional insured.

Optional Coverage Provisions applicable to the above. The selected option(s) is designated by a mark in the box to the left of the option.

- ☐ OPTION A. The insurance provided by this endorsement shall be primary, but only in the event of the Named Insured's sole negligence.
- ☒ OPTION B. The insurance provided by this endorsement shall be primary and noncontributory, but only in the event of the Named Insured's sole negligence.
- ☒ OPTION C. The insurance provided by this endorsement is amended to include any person or organization that the Named Insured has agreed and/or is required by contract to name as an additional insured, per schedule on file with company.

Additional Premium \$ [REDACTED]

AUTHORIZED REPRESENTATIVE

DATE

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SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT

NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION

The coverage afforded by this policy does not apply to bodily injury, personal injury or property damage arising out of:

1. Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos; or
2. The use of asbestos in construction or manufacturing any good, product or structure; or
3. The removal of asbestos from any good, product or structure; or

4. The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by the policy does not apply to payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense of claim or suit related to any of the above.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RESIDENTIAL EXCLUSION

This insurance does not apply, either directly or as assumed by contract, for any lawsuits, actions or any other claim for liability for "bodily injury," "property damage" or "personal and advertising injury" ("personal injury" or "advertising injury") arising from or in any way relating to the insured's operations or interest or any other involvement in any condominium, townhouse, apartment building or residential:

1. Development;
2. Construction;
3. Reconstruction; or
4. Renovation

that occurs:

- a. Prior to inception of this policy;
- b. During this policy term; or
- c. Prior to the inception of this policy and that continues into this policy term.

This exclusion applies in the following state(s):

ALL STATES

AUTHORIZED REPRESENTATIVE

DATE

Home Office Copy



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY—RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

With respect to operations performed for, or affecting, a Railroad, definition "insured contract" of SECTION V—DEFINITIONS section is replaced by the following:

"Insured contract" means:

- a. A contract for lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for

"bodily injury" or "property damage" to a third person or organization. Tort Liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

AUTHORIZED REPRESENTATIVE

DATE

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Audit Premium means the premium for this Coverage Part that is developed by calculating the difference between the Advance Premium and the Earned Premium.

Earned Premium means the premium for this Coverage Part that is developed by applying the rate(s) in

the policy to the actual premium basis for the audit period.

Minimum Premium means the lowest premium for which this Coverage Part will be written for the policy period.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MINIMUM AND ADVANCE PREMIUM/MINIMUM
EARNED CANCELLATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

SCHEDULE

MINIMUM PREMIUM \$ _____

Item 5. Premium Audit Condition of SECTION IV—
COMMERCIAL GENERAL LIABILITY CONDITIONS,
SECTION IV—LIQUOR LIABILITY CONDITIONS and
SECTION IV—PRODUCTS/COMPLETED OPERATIONS
LIABILITY CONDITIONS is replaced by:

5. Premium Audit

- We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- Premium shown in this Coverage Part as Advance Premium is a deposit premium only. At the close of each audit period we will compute the Earned Premium for that period and a billing notice of any Audit Premium due will be sent to the first Named Insured. The due date for the Audit Premium is the date shown as the due date on the bill. If the sum of the Advance Premium and Audit Premiums is greater than the Earned Premium, we will return the excess to the first Named Insured, subject to us retaining a Minimum Premium as shown above in the Schedule, including any premium adjustments made by endorsement to this policy during the policy period.

- The first Named Insured must keep records of the information we need for premium computation, and provide us or our representative copies at such times as we may request. In the event the first Named Insured fails or refuses to allow us or our representative to audit your records, we may unilaterally charge an Audit Premium for the policy period at or up to double the Minimum or Advance Premium, whichever is greater, and such Audit Premium shall be immediately due and payable on notice to the first Named Insured.

- If you request cancellation of this Coverage Part or policy, we will retain not less than twenty-five percent (25%) of the Advance Premium.

For purposes of this endorsement, the terms Advance Premium, Audit Premium, Earned Premium and Minimum Premium are defined as follows:

Advance Premium means the premium for this Coverage Part that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUBSIDENCE EXCLUSION

This policy does not apply to "bodily injury" or "property damage" caused by, resulting from, attributable or contributed to, or aggravated by the subsidence of land as a result of landslide, mudflow, earth sinking or shifting, resulting from operations of the named insured or any subcontractor of the named insured.

All other terms and conditions remain unchanged.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ENDORSEMENT

In the event Scottsdale Insurance Company fails to pay any loss which is payable under this policy as a result of its insolvency, Nationwide Mutual Insurance Company agrees it shall become liable for the loss after receiving written notice and demand for payment from the insured. Any payment shall be subject to and limited by the terms and conditions of this policy.

Nationwide Mutual Insurance Company

President

AUTHORIZED REPRESENTATIVE

DATE

**AFFIDAVIT OF SERVICE
BY REGULAR MAIL**

STATE OF NEW YORK)
: ss.
COUNTY OF NASSAU)

JEANNE A. BLANCHARD, being duly sworn deposes and says:

Deponent is not a party to the action, is over Eighteen (18) years of age and resides in North Bellmore, New York.

On July 20, 2006 deponent served the within RULE 26 Disclosure by mailing the same in a sealed envelope, with postage paid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: JAFFE & ASHER, LLP
Attorneys for Plaintiffs
WAUSAU UNDERWRITERS INS.
CO. and AXIS SPECIALTY INS. CO.
600 Third Avenue, 9th Floor
New York, New York 10016
(212) 687-3000

WILSON, BAVE, CONBOY, COZZA & COUZENS, P.C.
Attorneys for Defendant
QBE INSURANCE CORPORATION
Two William Street
White Plains, New York 10601


JEANNE A. BLANCHARD

Sworn to before me this
20 day of July, 2006


NOTARY PUBLIC

ELIZABETH PENAGOS
Notary Public, State of New York
No. 01PE5051168
Qualified in Nassau County
Commission Expires Oct. 30, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAUSAU UNDERWRITERS INSURANCE COMPANY AND AXIS SPECIALTY
INSURANCE COMPANY,

Plaintiffs,

-against-

QBE INSURANCE CORPORATION AND SCOTTSDALE INSURANCE
COMPANY

Defendants.

SCOTTSDALE INSURANCE COMPANY'S REPLY TO CROSS-COMPLAINT

KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP

Attorneys for

DEFENDANT, SCOTTSDALE INSURANCE CO.
69 EAST JERICO TURNPIKE
MINEOLA, NEW YORK 11501
(516) 742-3470

§2103 (b) (5) Notice: Service of Papers by Electronic Means is Not Accepted

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: July 20, 2006

Signature.....

Print Signer's Name.....LEONARD PORCELLI, ESQ.....

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20

☐

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at
on

20

, at

M.

Dated:

KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP

Attorneys for

To:

69 EAST JERICO TURNPIKE
MINEOLA, NEW YORK 11501

Attorney(s) for


 9.16.04
 SITE SAFETY
 EXHIBIT 13-B

JOBSITE INCIDENT REPORT

☐ Lost Property ☐ Damaged Property ☒ Injury Fire
☐ Suspected Crime or Offense ☐ Any other unusual occurrence or condition (explain)
☒ Trade Contractor's Employee ☐ BSCC Employee ☐ Visitor ☐ Public

Date of Report: SEPTEMBER 16, 2004Date/Time of Occurrence: SEPTEMBER 16, 2004 @ APPROX. 0925Project Name and Number: ST. GEORGE FERRY TERMINAL #200011Address: 1 RICHMOND TERRACE, STATEN ISLAND N.Y.Where: Describe property involved: WEST ENTRANCE ELEVATOR SHAFT

How: Brief description of incident, give details: ACCORDING TO TWO (2) WITNESSES (FELLOW IRON WORKERS) JOHN MOORE IRON WORKER WAS PERFORMING CONNECTOR PROCEDURES @ WEST ENTRANCE ELEVATOR SHAFT. HE WAS STANDING ON A SCAFFOLD WITH ~~OTHER~~ 2ND IRON WORKER WHEN HE ATTEMPTED TO STEP FROM SCAFFOLD ONTO ELEVATOR SHAFT BLOCK CHILL E. SIDE OF WALL WHEN HE LOST HIS FOOTING AND FELL APPROX. 23 FEET TO GROUND LEVEL. PAGE TWO

NYC Police Department Responding Name: OFFICE AIMONEPrecinct: 120TH Shield Number: _____Witness Name: JAMES SULLIVANAddress: 52 ZARRIELLO LANECity, State: WEST HAVENSTADT, NEW YORK 10993Phone: (1845) 405-1426Contractor's Name: A.J. MCNULTYAddress: 53-20 44TH ST.City, State: MASPETH, N.Y. 11378Phone: (718) 784-1655
 D.O.B. 9/14/55
 Injured Party Name: JOHN MOORE / AUNT KINSALA (732) 495-2834
Address: 30 PACIFIC AVENUECity, State: NORTH MIDDLE TOWN N.J. 07748Phone: (732) 787-1078BSCC Supervisor on-site: SEAN MCCALLAPrepared by Name: H. LEAG CARR 24

9.16.04

SITE SAFETY
EXHIBIT 13-B

Title: SITE SAFETY PRESENTATION

Signature: PA. A. [illegible]

Date: 9-16-04

WITNESS #2

ROBERT CORREDO
29 NEPTUNE AVE
NEW ROCHELLE, NY 10805
1(914) 654-0133

FROM PAGE ONE: DISTANCE FROM SCAFFOLD TO BRICK WALL APPROX. 2 1/2 FT (32")
IRON WORKER SUSTAINED MULTIPLE LACERATIONS AND BRUISES
WAS TAKEN TO ST. VINCENT HOSPITAL AND FROM ALL REPORTS
HE IS IN GOOD STABLE CONDITION WITH NO SERIOUS OR LIFE
THREATENING INJURIES @ THIS TIME.

ACC/PLR # 2659713

A.J. Mc NULTY & CO., INC.53-20 44th Street, Maspeth, New York 11378 (718) 784-1655 Fax (718) 784-3889

9.16.04

ACCIDENT REPORT

DATE: 9/20/04 JOB: St George Ferry Terminal # JOB#: 1864

1. Name of Injured: JOHN MOORE

2. Address of Injured: _____

3. Age: _____ Date of Birth: _____ SS# _____

4. Occupation: IRON WORKER Local: _____

5. Place Where Accident Occurred: New Steel Area Date & Time: 9/16/04

6. Name of Foreman: Norman Pryce Was Foreman Notified? YES

7. Item Causing Injury: pre-cut brick wall Was Safety Device Available? YES

8. How Did The Accident Occur? IRON WORKERS were connecting a beam. A concrete brick wall was in way of work. John Moore goes to step on brick and brick collapses, sending worker down 23' x" hole.

9. What Was The Employee Doing When Injured: going from a scaffold to a brick wall

10. Names of Witnesses: James Sullivan, Robert Corredor, Michael Grieco

11. Nature of Injury: BROKEN Elbow, concussion, possible rib fractures

12. Name & Address of Physician/Medical Center: St. Vincent's Medical Center

13. Did Injured Employee Lose Time? Yes

14. How Could the Accident Have Been Avoided? Laborer should have removed concrete brick after cutting with demo saw. shut also should have been properly covered.

Prepared By: James M. Sullivan Signed By: James M. Sullivan

9.16.04

1 Moore

2 have pain in one shoulder or both?

3 A. Just the right one pretty much.

4 Q. Did you have pain in your right elbow
5 or both?

6 A. My right elbow.

7 Q. Both knees?

8 A. Yeah.

9 Q. What part of your back?

10 A. The middle of my back and the lower
11 part on the right side. It kind of goes into
12 my hip over here.

13 Q. The pain radiates down to your hip?

14 A. Yes.

15 Q. Which hip?

16 A. My right hip.

17 Q. What part of your neck?

18 A. On the right side of my neck. It
19 feels like dead sometimes in there. I get
20 like a sharp pain and then it goes dead.

21 Q. Like numb?

22 A. Yes.

23 Q. How frequently does that happen?

24 A. A couple of times a week.

25 Q. Did Dr. Touliopoulos send you for

1 Moore

2 MRIs?

3 A. Well, I was approved by the State
4 Compensation for an MRI at a hearing, but
5 they still haven't sent the official approval
6 to my doctor to have the MRI.

7 Q. When was there a hearing with the
8 Compensation?

9 A. It had to be ten months ago.

10 Q. Are you receiving money from Workers'
11 Compensation?

12 A. Yes.

13 Q. How much are you receiving?

14 A. 400 a week.

15 Q. That's for lost wages or something
16 else?

17 A. I don't know what it's considered.

18 Q. Did you have an MRI at Diagnostic
19 Radiology Associates on West 17th Street in
20 2004?

21 A. I'm not sure. I've had some x-rays
22 done there.

23 Q. So, you do recall going to Diagnostic
24 Radiology Associates' office on West 17th
25 Street in New York City?

1 Moore

2 A. Yes.

3 Q. Were you referred there by Dr.
4 Touliopoulos?

5 A. Yes.

6 Q. Did you go back for any MRIs at that
7 same facility in January of 2005?

8 A. I don't know if I ever got an MRI
9 there. I got a couple of MRIs by where I
10 live.

11 MR. DIAMOND: I believe only
12 x-rays were taken at that facility. I
13 believe. I could be wrong.

14 Q. Can you identify where near your home
15 you had MRIs?

16 A. I think it's Middletown Imaging.

17 MR. KOVNER: Off the record.

18 (Discussion held off the
19 record.)

20 Q. Middletown Imaging?

21 A. Yes.

22 Q. How many MRIs have you had at that
23 facility?

24 A. A couple that I recall.

25 Q. Were you referred to Middletown

1 Moore

2 Imaging by Dr. Touliopoulos or someone else?

3 A. Yes.

4 Q. Did someone at Middletown Imaging tell
5 you the results of the MRI or did Dr.

6 Touliopoulos tell you?

7 A. I don't even know if I know the
8 results.

9 Q. Can you tell us when you had the MRIs
10 at the Middletown Imaging facility?

11 A. Vaguely. Just within the last couple
12 of years.

13 Q. Your accident was in 2004. So,
14 everything was in the last couple of years.

15 Were the MRIs taken in 2006 at this
16 location?

17 A. No. I don't think so.

18 Q. Sometime in 2005?

19 A. Yes.

20 MR. KOVNER: For the record, I
21 don't think we ever received
22 authorizations for Middletown Imaging.
23 I request them.

24 REQUEST NOTED:

25 Q. On your last visit to Dr. Touliopoulos

1 Moore

2 in July of 2006 what, if anything, did he
3 tell you about your right shoulder?

4 A. That I needed an operation.

5 Q. Did Dr. Touliopoulos tell you that he
6 would do the surgery?

7 A. Yeah.

8 Q. Is it scheduled?

9 A. No. We need approval from the State
10 Compensation. Even though at the hearing I
11 was approved, they still haven't formally
12 given approval.

13 Q. At your last visit in July of 2006
14 what, if anything, did Dr. Touliopoulos tell
15 you about your right elbow?

16 A. That he wanted to MRI it again.

17 Q. Did he indicate that he was concerned
18 about a particular condition?

19 A. Not that I recall.

20 Q. Do you have an appointment for an MRI
21 of your right elbow?

22 A. That's another thing. It was approved
23 by the State Compensation, but it's still not
24 formally approved.

25 Q. What, if anything, did Dr.

1 Moore

2 Touliopoulos tell you about your knees in
3 July of 2006?

4 A. That he wanted to MRI them to see why
5 I was still having pain in them.

6 Q. I take it you have not yet had an MRI
7 of your knees?

8 A. No.

9 Q. Is it scheduled?

10 A. Not that I know of.

11 Q. Was that also approved at the Workers'
12 Compensation hearing?

13 A. Yes. I went in front of a judge at
14 the Compensation hearing, and they approved
15 four or five different things, but nothing
16 has formally been given to me.

17 MR. KOVNER: Off the record.

18 (Discussion held off the
19 record.)

20 Q. On your last visit to Dr. Touliopoulos
21 what, if anything, did he tell you about your
22 back?

23 A. He wanted to give me some epidural
24 shots in my lower back.

25 Q. Did you ever receive epidurals?

1 Moore

2 A. No. I'm a little hesitant.

3 Q. Why is that?

4 A. I know this is going to sound
5 contradictory to my life, but I really don't
6 want somebody sticking needles in my back.

7 Q. Have you discussed that with your
8 fiancée?

9 MR. DIAMOND: Note my objection.

10 A. I think she's tired of hearing me
11 complain.

12 Q. So, I take it at present you don't
13 have any appointments scheduled for an
14 epidural injection?

15 A. No. We discuss it when I go to visit
16 Dr. Touliopoulos, but I usually kind of try
17 to round on that.

18 Q. Did Dr. Touliopoulos tell you in words
19 or substance that the epidural injections
20 might reduce your pain?

21 A. That's not what I get from him.

22 Q. What did you get from him?

23 MR. DIAMOND: Note my objection.

24 A. We're kind of reaching for anything
25 that might help.

1 Moore

2 Q. On your last visit to Dr. Touliopoulos
3 what, if anything, did he tell you about your
4 neck?

5 A. That he wanted to take an MRI of that
6 as well.

7 Q. I take it that has not yet been
8 scheduled?

9 A. No.

10 Q. Was an MRI of your neck also approved
11 at the Compensation hearing? Do you know?

12 A. I think it was. Everything that I
13 applied for the judge okayed.

14 Q. When for the first time did you see
15 Dr. Hausknecht?

16 A. About a month and a half after I got
17 out of the hospital.

18 Q. Prior to September 16th of 2004 had
19 you ever seen Dr. Hausknecht?

20 A. No.

21 Q. Is his office located on East 37th
22 Street in New York City?

23 A. Yes.

24 Q. Who referred you to Dr. Hausknecht?

25 A. You know, I don't even remember.

1 Moore

2 Q. Were you referred to him by your
3 attorney?

4 A. I don't even remember to tell you the
5 truth. I just heard that he was really good.

6 Q. Who did you hear that from?

7 A. I want to say somebody that got hurt
8 in my business, but I'm not sure.

9 Q. You saw him approximately one month
10 after you were discharged from the hospital?

11 MR. DIAMOND: Month and a half.

12 A. Month and a half.

13 Q. What were your complaints at that
14 time?

15 A. I think it was the first or second
16 visit that my girlfriend came with me,
17 because she was getting irritated that I was
18 having real problems with my short-term
19 memory. I would keep asking her the same
20 things, and she said that we had already
21 discussed it and I had no recollection of
22 discussing it, and I would get severe
23 headaches, which I still get. I get them
24 behind my eye and behind my right ear.

25 Q. Behind your right eye and behind your

1 Moore

2 right ear?

3 A. Yes.

4 Q. How frequently do you get the severe
5 headaches behind your right eye and right
6 ear?

7 A. I would say everyday, especially when
8 I'm doing homework with my son.

9 Q. Did Dr. Hausknecht perform any tests
10 on your first visit?

11 A. He did several tests. I'm not sure
12 what they're called.

13 Q. Did he tell you the results of the
14 tests?

15 A. I think he did, but I don't remember.
16 I don't mean to sound vague, but I don't.

17 Q. As you sit here today you're unable to
18 tell us in substance what Dr. Hausknecht told
19 you the results of the tests were?

20 A. Yeah. I couldn't tell you in
21 substance.

22 Q. How many times in total have you seen
23 Dr. Hausknecht?

24 A. It's got to be 15 or 20.

25 Q. When was the last time prior to today

1 Moore

2 that you saw Dr. Hausknecht?

3 A. July.

4 Q. Before that, when was the last visit?

5 A. June.

6 Q. Do you see Dr. Hausknecht every month?

7 A. Yes.

8 Q. Do you try to see Dr. Hausknecht and
9 Dr. Touliopoulos on the same trip from your
10 home into the City?

11 A. That would make sense, but I haven't
12 done it like that.

13 Q. Do you have an appointment scheduled
14 with Dr. Hausknecht?

15 A. No.

16 Q. On your last visit to Dr. Hausknecht
17 in July of '06 what complaints, if any, did
18 you have with respect to the injuries that
19 you've sustained in this accident?

20 A. That I was still getting headaches and
21 sometimes it affects my sleeping, that I get
22 really nervous.

23 Q. Anything else?

24 A. That I have been getting forgetful.

25 Q. Is it fair to say that the complaints

1 Moore

2 that you've just listed for us have
3 essentially been the same complaints that
4 you've made to Dr. Hausknecht on each of your
5 15 to 20 visits to him?

6 A. Sometimes the headaches are like more
7 intense than other times.

8 Q. So, there would be times during these
9 15 to 20 visits when your complaints about
10 the headaches would be something that you
11 emphasized in your discussions with Dr.
12 Hausknecht, correct?

13 A. Yeah.

14 Q. But is it fair to say that you've
15 complained about the headaches on each of
16 your visits to him?

17 A. Pretty much.

18 Q. Have you also complained about getting
19 forgetful on each of your visits to him?

20 A. Yes.

21 Q. Have you complained about the effect
22 the accident has had on your sleeping on each
23 of your visits to him?

24 A. Yes.

25 Q. Have you complained about getting

1 Moore

2 really nervous on each of your visits to him?

3 A. Probably not every visit.

4 Q. On your last visit to Dr. Hausknecht
5 in July of 2006 what, if anything, did he
6 tell you about the headaches?

7 A. That it was a result of hitting my
8 head, being unconscious.

9 Q. Did he tell you that there was any
10 treatment that he could do that would help
11 alleviate the headaches?

12 A. I don't remember.

13 Q. What, if anything, did Dr. Hausknecht
14 tell you about your getting forgetful?

15 A. That it could be from head trauma.

16 Q. Did he tell you that it could be from
17 something else as well?

18 A. No. I think he just pretty much stays
19 for what I see him for, the head trauma.

20 Q. Over the course of your 15 to 20
21 visits to Dr. Hausknecht from '04 when you
22 first saw him a month and a half after the
23 discharge from St. Vincent's right up through
24 to the present has your short-term memory
25 been about the same, gotten worse or gotten

1 Moore

2 better?

3 A. I think you have to ask somebody that
4 I deal with everyday, because I'm not sure.
5 I know it irritates my girlfriend.

6 Q. Is the forgetfulness limited to
7 short-term memory or does it also apply to
8 long-term memory?

9 A. I don't know.

10 Q. Did Dr. Hausknecht ever prescribe any
11 medication for the headaches other than the
12 Vicodin?

13 A. No.

14 Q. Did Dr. Hausknecht ever prescribe any
15 treatment for the forgetfulness or the
16 headaches?

17 A. Not that I remember.

18 Q. Did Dr. Hausknecht perform any tests
19 on any of your visits in 2006?

20 A. No, not this year.

21 Q. Did Dr. Hausknecht perform any tests
22 on any of your visits in 2005?

23 A. Yes.

24 Q. When was the last time in 2005 that he
25 performed any tests?

1 Moore

2 A. I would say about over a year ago.

3 Q. Sometime in 2005 before September?

4 A. Yeah.

5 Q. Can you describe the test that he did
6 at that time?

7 A. He hooked up like these wires to my
8 head with some kind of gel. I don't
9 remember. I'm not trying to be vague, but I
10 don't really remember how the test
11 transpired.

12 Q. You don't recall what, if anything, he
13 told you about the results; is that correct?

14 A. No.

15 Q. Have you been treated by anyone other
16 than at St. Vincent's, Dr. Touliopoulos and
17 Dr. Hausknecht as a result of the injuries
18 that you sustained in this accident?

19 A. No.

20 MR. DIAMOND: And the places for
21 testing.

22 MR. KOVNER: Right.

23 (Brief recess taken.)

24 Q. Have you ever gone for physical
25 therapy as a result of the injuries that you

1 Moore

2 sustained?

3 A. Yes.

4 Q. When for the first time did you go for
5 physical therapy?

6 A. About three weeks after the operation.

7 Q. Where did you go?

8 A. Pro-Care.

9 Q. Where is Pro-Care located?

10 A. Holmdel, New Jersey?

11 Q. Had you been to Pro-Care at anytime
12 prior to September 16th of 2004?

13 A. No.

14 Q. How frequently did you go to Pro-Care?

15 A. In the beginning like twice-a week.

16 Q. For how long approximately did you go
17 twice a week?

18 A. A few months.

19 Q. After a few months, did you continue
20 to go there but less frequently?

21 A. I stopped after awhile.

22 Q. Can you tell us approximately when you
23 stopped?

24 A. After about three or four months, I
25 think.

1 Moore

2 Q. At anytime after you stopped going for
3 physical therapy at Pro-Care did you get
4 physical therapy at any other place?

5 A. I went to a chiropractor.

6 Q. Who's the chiropractor?

7 A. Dr. Sanford.

8 Q. What's the complete name?

9 A. I think Richard Sanford.

10 Q. Where is Dr. Richard Sanford located?

11 A. Middletown, New Jersey.

12 Q. When did you see him for the first
13 time?

14 A. Maybe three or four months after the
15 accident.

16 Q. When did you start in with the
17 chiropractor, right after you stopped with
18 the physical therapy?

19 A. Yes. I asked my doctor if it would be
20 okay.

21 Q. Who did you ask, Dr. Touliopoulos?

22 A. Yes.

23 Q. What did he say?

24 A. He said yeah.

25 Q. How frequently did you see the

1 Moore

2 chiropractor?

3 A. Twice a week.

4 Q. When was the last time you saw the
5 chiropractor?

6 A. Maybe a year ago.

7 Q. Do you have any appointments scheduled
8 presently with a physical therapist or
9 chiropractor?

10 A. No. I was going to though because he
11 was helping to alleviate some of the pain in
12 my back.

13 Q. The chiropractor was?

14 A. Yes.

15 Q. Did you get any relief from the
16 physical therapy?

17 A. Yeah, it was helping.

18 Q. Recently have you been looking around
19 for a new chiropractor to go to?

20 A. No. I'm thinking about going back to
21 him.

22 Q. Going back to Dr. Sanford?

23 At anytime after your accident of
24 September 16th of 2004 were you taking Paxil?

25 A. After the accident?

1 Moore

2 Q. Yes.

3 A. I was taking it for about a year.

4 Q. Were you ever taking Paxil prior to
5 the accident?

6 A. Yes.

7 Q. When for the first time did you take
8 Paxil before the accident?

9 A. Maybe a year before.

10 Q. Who prescribed the Paxil?

11 A. Dr. Gornish.

12 Q. What condition did you complain to her
13 about that led her to prescribe Paxil?

14 A. Anxiety. That's about it.

15 Q. Were you having trouble sleeping?

16 A. A little bit.

17 Q. How frequently did you have trouble
18 sleeping prior to the accident?

19 A. Not too often.

20 Q. Did you ever take Ambien prior to the
21 accident of September 16th of 2004?

22 A. Yes.

23 Q. When for the first time prior to the
24 accident did you take Ambien?

25 A. I'm not sure.

1 Moore

2 Q. Who prescribed Ambien before the
3 accident?

4 A. Dr. Gornish.

5 Q. How frequently did you take Paxil
6 prior to the accident?

7 A. Daily.

8 Q. You took Paxil for approximately one
9 year after the accident?

10 A. Yes.

11 Q. How frequently?

12 A. Daily.

13 Q. When was the last time prior to today
14 that you took Paxil?

15 A. A little over a year ago.

16 Q. Do you presently have a prescription
17 for any other medication for anxiety?

18 A. Yes, Risperdal.

19 Q. Was that prescribed by Dr. Gornish?

20 A. No.

21 Q. By whom?

22 A. It was prescribed through this doctor,
23 through this psychologist that I started
24 seeing after the accident.

25 Q. What is the psychologist's name?

1 Moore

2 A. Marie, and you know this sounds
3 outrageous, but I can't even remember her
4 last name.

5 MR. KOVNER: Counsel, do you
6 have that information?

7 MR. DIAMOND: I don't, other
8 than Marie.

9 MR. KOVNER: I presume from your
10 answer that we also don't have
11 authorizations. So, I'll request
12 those.

13 MR. DIAMOND: It's a new
14 development.

15 REQUEST NOTED:

16 Q. When approximately did the
17 psychologist prescribe Risperdal?

18 A. Two months ago.

19 Q. Was that your last appointment with
20 her or have you seen her since then?

21 A. I have seen her like two or three
22 weeks ago.

23 Q. Do you have an appointment scheduled
24 with her in the future?

25 A. I can walk in on her unannounced any

1 Moore

2 Wednesday or Friday.

3 Q. Where is her office located?

4 A. In Jersey Shore Medical in Neptune.

5 Q. On your first visit to Marie what were
6 your complaints to her?

7 A. Everything. You know, being out of
8 work, not having enough money for bills.

9 Q. Anything else?

10 A. Just general stuff.

11 Q. Well, can you tell us with any kind of
12 specificity any other complaint that you made
13 to Marie besides being out of work and not
14 having enough money to pay bills?

15 A. Complaining about the kids being too
16 loud.

17 Q. Anything else?

18 A. That's about it.

19 Q. Have you filled the prescription for
20 Risperdal?

21 A. Yes.

22 Q. How frequently, if at all, do you take
23 Risperdal?

24 A. Twice a day.

25 Q. Did you take any today before you came

1 Moore

2 here?

3 A. No, I didn't.

4 Q. Did you take two yesterday?

5 A. Yes, two. I took them last night.

6 Q. What, if anything, did Marie tell you
7 about your condition?

8 A. It's like a work in progress. She
9 hasn't given me any definitive stuff yet.

10 Q. How frequently did you take Ambien
11 prior to the accident?

12 A. A couple of times a week.

13 Q. Did you continue to take Ambien from
14 time to time after the accident?

15 A. No. I don't take it anymore.

16 Q. Did you take it at anytime after the
17 accident?

18 A. Yes.

19 Q. When was the last time you took it?

20 A. A couple of weeks ago.

21 Q. Just before you stopped taking it a
22 couple of weeks ago how frequently did you
23 take the Ambien?

24 A. I wasn't taking it at all.

25 Q. Did you take Ambien at anytime in 2006

1 Moore

2 before a couple of weeks ago?

3 A. No. I had stopped taking it for about
4 a year.

5 Q. When you took it a couple of weeks
6 ago, was that part of an old prescription
7 which you had filled earlier or did you get a
8 new prescription?

9 A. No. I went and asked for a new
10 prescription.

11 Q. From whom?

12 A. Dr. Gornish.

13 Q. As you sit here today do you have any
14 complaints of pain as a result of the
15 injuries that you sustained?

16 A. My arm, my right arm, my right
17 shoulder, my lower back on my right side, my
18 neck, my head, my left knee today, my right
19 knee yesterday.

20 Q. Anything else?

21 A. That's it.

22 Q. As a result of the injuries that you
23 sustained are there any activities which you
24 used to engage in, but which you're no longer
25 able to?

1 Moore

2 A. Sports, playing catch with my son. I
3 really got into weightlifting when I got
4 straight 20 years ago. I haven't been really
5 able to do that anymore.

6 Q. Anything else?

7 A. Ironworking, which is all I really
8 know how to do.

9 Q. I'm not talking for the moment about
10 being able to work, but rather any non-work
11 activities.

12 Are there any other non-work
13 activities which you used to engage in, but
14 claim that you can no longer do as a result
15 of the injuries that you sustained?

16 A. Wrestling around on the floor with the
17 kids. You know?

18 Q. Anything else?

19 A. Yard work. We like to plant flowers
20 and stuff.

21 Q. Anything else?

22 A. Swimming.

23 Q. Anything else?

24 A. No.

25 Q. Did you play on any team sports in

1 Moore

2 high school?

3 A. Yeah.

4 Q. What sports did you play?

5 A. I played baseball, basketball. I
6 played hockey. I was on the swimming team in
7 the Boys Club in Manhattan. I grew up in
8 Manhattan. I did some boxing.

9 Q. Did you ever hurt your knee playing
10 any sports in school?

11 A. No. I never had any serious injuries.

12 Q. In 2004 just before September 16th
13 what sports did you engage in that you no
14 longer can do?

15 A. Weightlifting, basketball, punch the
16 bag everyday, play baseball, football with my
17 sons.

18 Q. Did you belong to a gym in September
19 of '04?

20 A. Yes.

21 Q. What's the name of the gym?

22 A. It's no longer there. It was called
23 the Study Hall Gym.

24 Q. Where was it located?

25 A. Keansburg, New Jersey.

1 Moore

2 Q. When did it go out of business?

3 A. About a year and a half ago.

4 Q. I take it you're not a member of a gym
5 today?

6 A. Well, I go to one for therapy reasons.

7 Q. What gym do you go to today?

8 A. Gold's.

9 Q. What's the address of the branch?

10 A. It's in Middletown, New Jersey, but
11 I'm not really like -- if showing up counts
12 as membership, I'm really not a member.

13 Q. How frequently do you go to Gold's?

14 A. Once every few weeks.

15 Q. What do you do when you're there?

16 A. Socialize.

17 Q. Do you ever try to lift weights?

18 A. I can't.

19 Q. Do you ever do push-ups, things like
20 that?

21 A. I can't even do one push-up anymore.

22 Q. Have you ever been able to do any
23 push-ups at anytime since the accident?

24 A. No, not since the accident. I used to
25 do 50 at a clip even when I was 49.

1 Moore

2 Q. How frequently did you play basketball
3 prior to the accident?

4 A. Once a week.

5 Q. Have you ever tried since the
6 accident?

7 A. No. I'm right-handed. I can't shoot.

8 Q. How frequently did you play baseball
9 prior to the accident?

10 A. I hadn't played baseball in years.

11 Q. You used to just fool around with your
12 sons?

13 A. Yes. Play catch in the backyard. He
14 played on little league teams.

15 Q. Have you tried to do that since your
16 accident?

17 A. No. I can't throw overhand.

18 Q. How frequently did you use to do yard
19 work prior to the accident?

20 A. A couple of times a week.

21 Q. Have you been able to do it at all
22 since?

23 A. No. I'm pretty much useless.

24 MR. KOVNER: Thank you, Mr.

25 Moore. I have no further questions.

1 Moore

2 I refer to my colleagues.

3 EXAMINATION BY

4 MR. MC DERMOTT:

5 Q. My name is Matt McDermott. I
6 represent Kel Tech Construction. I have a
7 few questions for you.

8 Have you ever heard of Kel Tech
9 Construction?

10 A. Is that with a C?

11 Q. With a K.

12 A. No.

13 Q. Sir, at the time of your accident were
14 you wearing a hard hat?

15 A. Yes.

16 Q. Who provided it to you?

17 A. I have my own.

18 Q. Could you describe for me the basic
19 layout of the area of the building where you
20 were when your accident happened? I
21 understand you were on a concrete deck and
22 there was an elevator shaft somewhere in the
23 vicinity, but to the best of your ability can
24 you give me a general description of the
25 layout of the area?

1 Moore

2 A. I really can't.

3 Q. Was it an open construction floor?

4 A. Yeah.

5 Q. Did it have a roof on it or was it
6 open to the air?

7 A. It was open to the air.

8 Q. The beam that you were working with at
9 the time you had your accident, was that beam
10 to serve as a vertical column on the deck or
11 was it to serve as a support for the next
12 level of the building or something else?
13 What was that beam going to be?

14 A. I think it was a support for the -- I
15 think other beams were going to come off of
16 it.

17 Q. The beam that you were working with
18 when your accident happened, was it to be
19 installed horizontally or vertically?

20 A. Horizontally.

21 Q. When it was installed horizontally,
22 was it going to be at the level of the
23 concrete deck that you were standing at?

24 A. No.

25 Q. Higher than that?

1 Moore

2 A. Higher than that.

3 Q. Was that to be the next horizontal
4 level of the building?

5 A. I would think so, yeah.

6 Q. The beam that you were working with,
7 was that going to be attached to other pieces
8 of steel or was it going to be set in a
9 pocket in a masonry wall or a combination of
10 that or something else?

11 A. I think maybe a combination.

12 Q. Was one end of it going to go into a
13 pocket in a masonry wall?

14 A. Possibly. I can't be specific.

15 Q. The opening to the elevator shaft at
16 the level where you were, what were the
17 dimensions of that opening?

18 A. Maybe three or four feet.

19 Q. Three or four feet wide?

20 A. Yes.

21 Q. How far up did the shaft extend beyond
22 the level that you were standing on? Was it
23 an entire open doorway or only a portion?

24 A. It was an open doorway, but it had
25 walls next to it.

1 Moore

2 Q. There were walls that extended all the
3 way up on both sides of the doorway?

4 A. Yes.

5 Q. Was there anything guarding or
6 protecting the open doorway to the elevator
7 shaft on the day of your accident?

8 A. No.

9 Q. Are you familiar with the name of a
10 gentleman named Robert Corridor or Corredon?

11 MR. DIAMOND: Spell that for me.

12 MR. MC DERMOTT:

13 C-O-R-R-E-D-O-N.

14 Q. I'll represent to you and your counsel
15 that that man is listed as a potential
16 witness to your accident according to this
17 accident report. He's from New Rochelle, and
18 his name is Robert Corredon or Corridor.

19 MR. DIAMOND: Note my objection
20 to some document that is not
21 identified in the record and we
22 haven't established that this witness
23 ever saw it and knows what it is, but
24 you have the question and he answered
25 it. He doesn't know.

1 Moore

2 Just so we know what you're
3 referencing, which document are you
4 referring to? Is that the Skanska
5 report?

6 MR. MC DERMOTT: Yes.

7 Q. Sir, as a member of Local 40 at the
8 time of your accident what was your hourly
9 wage?

10 A. It's got to be \$50 an hour.

11 Q. Aside from the hourly wage, what other
12 benefits were you entitled to or did you
13 receive as a union ironworker?

14 A. Pension, hospitalization, medical,
15 dental, vacation.

16 Q. Is there an annuity?

17 A. Annuity.

18 Q. Anything else that you can think of as
19 you sit here right now?

20 A. No.

21 Q. Each of those benefits that were
22 included as part of your compensation, did
23 the employer make contributions to each of
24 those categories per hour?

25 A. Yes.

1 Moore

2 Q. Do you know what the dollar figures
3 per hour were for each of those things that
4 you just listed?

5 A. I know that I should, but I don't.

6 MR. DIAMOND: Off the record.

7 (Discussion held off the
8 record.)

9 A. And the topping out fund.

10 Q. Sir, have you ever heard of something
11 called a forced furlough program?

12 A. No.

13 Q. In the ten years before the accident
14 happened was there ever an occasion where the
15 union indicated that we're going to have to
16 lay you off for a period of time to give some
17 other union member an opportunity to work?

18 A. No.

19 Q. In the five years before your accident
20 happened did the union provide you with a
21 work opportunity if you wanted one? Did you
22 work full-time?

23 A. If it was available, yeah.

24 Q. Were there any periods when there was
25 no work for you from the union hall in the

1 Moore

2 five years prior to the accident?

3 A. Sometimes.

4 Q. What was the longest period that there
5 was no work for you?

6 A. A couple of weeks.

7 Q. Were there periods each year where
8 there was no work or was it less frequent
9 than yearly that there would be periods of no
10 work for you?

11 A. It was less frequent as I became more
12 established.

13 Q. Is there an attorney who is
14 representing you in your Workers'
15 Compensation claim?

16 A. I think so.

17 Q. Is it someone at Sacks & Sacks or is
18 it a different law firm?

19 A. No. I think it's Pulsky & -- I'm not
20 sure of the other member of the firm.

21 Q. Aside from the \$400 a week in
22 indemnity benefits that you receive from the
23 State Insurance Fund, your Workers'
24 Compensation benefits, do you have any other
25 source of income right now?

1 Moore

2 A. No.

3 Q. Do you receive any benefits from the
4 union?

5 A. The first six months I received \$150 a
6 week. Then after six months that ends.

7 Q. Have you applied for disability
8 benefits from the Social Security
9 Administration?

10 A. Yes.

11 Q. Did you receive a response to your
12 application?

13 A. I was turned down once.

14 Q. Did an attorney assist you in the
15 preparation of your application?

16 A. Yes, Binder & Binder.

17 Q. When were you denied benefits from
18 Social Security?

19 A. About seven months ago.

20 Q. Are you pursuing an appeal of that
21 decision?

22 A. Yes.

23 Q. Is Binder & Binder helping you with
24 that?

25 A. Yes.

1 Moore

2 Q. Have you ever spoken to anyone at the
3 scene of the accident about how your accident
4 occurred, aside from your attorneys
5 obviously?

6 A. Not really.

7 Q. Has anyone ever indicated to you why
8 the concrete at the threshold of the elevator
9 shaft crumbled?

10 A. No.

11 Q. Aside from the potential surgery to
12 your right shoulder, have any of your
13 physicians recommended any other surgical
14 procedures to any other part of your body?

15 A. Not yet.

16 MR. MC DERMOTT: I don't have
17 any further questions. Thank you for
18 your time.

19 EXAMINATION BY

20 MR. VERAS:

21 Q. Good afternoon. I represent Arena
22 Construction. I'll try to be very brief and
23 not repeat any of the questions that you were
24 asked this morning. I'll ask for your
25 patience.

1 Moore

2 Going back to the job site at the
3 Staten Island Ferry Terminal project. You
4 were there approximately four days?

5 A. Yes.

6 Q. During your involvement over the
7 course of the four days at the job site did
8 you ever become aware of a company called
9 Arena Construction Company at the job site?

10 A. I can't say I have.

11 Q. Do you know if there was a general
12 contractor during the four days at the job
13 site?

14 A. I thought Skanska was.

15 Q. During those four days while at the
16 job site did you ever see any Skanska
17 employees in or about the area where you were
18 working or the areas that you were working?

19 A. I don't really recall.

20 Q. Going back to the date of your
21 accident. Approximately what time did you
22 start work that day?

23 A. 7:00 we start.

24 Q. Do you recall what time of day the
25 accident occurred?

1 Moore

2 A. Sometime in the morning.

3 Q. When you say sometime in the morning,
4 had you been on the job site an hour, a
5 couple of hours or something else?

6 A. I think a couple of hours.

7 Q. During those couple of hours did you
8 observe any Skanska employees in or about the
9 area where your accident eventually occurred?

10 A. I don't remember to tell you the
11 truth.

12 Q. Do you recall just in general seeing
13 Skanska employees at the job site over the
14 four days?

15 A. Laborers. They were some of the
16 Skanska employees.

17 Q. How did you know they were Skanska
18 laborers?

19 A. I think some of them had hard hats on
20 them.

21 Q. Which said Skanska on them?

22 A. Yes.

23 Q. Other than the laborers, did you ever
24 see any other Skanska employees with hard
25 hats or shirts or anything that indicated

1 Moore

2 that they worked with Skanska?

3 A. No, not that I know of.

4 Q. Now, you brought your own hard hat to
5 the job?

6 A. Yes.

7 Q. With regard to the four days that you
8 were there did McNulty have any type of a
9 shanty or trailer at this job site?

10 A. It was like a trailer. A tool shed
11 really.

12 Q. In general what was housed in the tool
13 shed?

14 A. Tools.

15 Q. Were there any types of safety
16 devices; eye protection, fall protection,
17 maintained in the tool area?

18 A. I never seen any.

19 Q. Did you ever inquire while you were
20 there over those four days whether or not
21 McNulty had any type of fall protection at
22 this job site?

23 A. I didn't ask.

24 Q. After your accident occurred, you
25 indicated that there was a point in time when

1 Moore

2 you came to and you were treated by an EMT,
3 correct?

4 A. Yes.

5 Q. Mike was also present at the bottom of
6 the shaft?

7 A. Yes.

8 Q. Do you know how Mike was physically
9 able to get down to the bottom of the shaft?

10 A. No.

11 Q. After you regained consciousness,
12 there was a time when you were removed from
13 the shaft?

14 A. Yes.

15 Q. Do you recall how you were removed
16 from the shaft?

17 A. No.

18 Q. Who removed you from the bottom of the
19 shaft?

20 A. Paramedic.

21 Q. Was it more than one?

22 A. Yes.

23 Q. You don't recall the mechanism of how
24 they removed you from the bottom of the
25 shaft?

1 Moore

2 A. No.

3 Q. During the time that you've treated
4 with Dr. Touliopoulos did he ever recommend
5 you or refer you to see a Dr. Caliguiri?

6 MR. DIAMOND: Spell that for the
7 record.

8 MR. VERAS: Sure.

9 C-A-L-I-G-U-I-R-I.

10 A. No.

11 Q. Did Dr. Touliopoulos refer you to any
12 doctors during the course of time that you've
13 treated with him?

14 A. A podiatrist.

15 Q. Do you recall the name of the
16 podiatrist that he referred you to?

17 A. Ivan Herstick.

18 Q. Why did Dr. Touliopoulos refer you to
19 a podiatrist?

20 A. I was starting to have problems with
21 my right leg and there was intense pain in my
22 right foot, which I still have.

23 Q. Did you see the podiatrist?

24 A. Yes.

25 Q. When did you first see the podiatrist?

1 Moore

2 A. About four or five months ago.

3 Q. On how many occasions did you see the
4 podiatrist?

5 A. About six.

6 Q. What type of treatment did the
7 podiatrist provide?

8 A. Cortisone shots.

9 Q. Did the podiatrist send you for any
10 type of diagnostic tests, such as MRIs,
11 x-rays?

12 A. Yes. That was what was baffling them.
13 They did two MRIs of my right foot.

14 Q. Where were those MRIs done?

15 A. In his office.

16 Q. In the podiatrist's office?

17 A. Yes.

18 Q. Where was the podiatrist's office?

19 A. In St. Vincent's Hospital on 12th
20 Street and Seventh Avenue.

21 Q. Did the podiatrist discuss the results
22 of the MRIs to your foot?

23 A. They were negative.

24 Q. Did the podiatrist provide any other
25 treatment other than the cortisone shots?

1 Moore

2 A. An anti-inflammatory.

3 Q. Do you recall the name of it?

4 A. No.

5 Q. That was an oral medication that you
6 took?

7 A. Yes.

8 Q. Do you still take it?

9 A. Yes.

10 Q. How often do you take it?

11 A. Every night, once a night.

12 Q. Do you have any appointments scheduled
13 to see the podiatrist presently?

14 A. No.

15 Q. With regard to the anti-inflammatory
16 that you presently take that was prescribed
17 by the podiatrist, do you have any refill
18 prescriptions presently on that medication?

19 A. No.

20 Q. Other than the podiatrist, did Dr.
21 Touliopoulos send you or recommend you to see
22 any other doctors or health care
23 professionals?

24 A. Initially there was a hand specialist,
25 because I was having a problem with my right

1 Moore

2 hand, but I can't remember the doctor's name.

3 I never went to see the doctor.

4 Q. Other than the podiatrist and the
5 recommendation of the hand specialist, did he
6 recommend that you see anyone else?

7 A. No.

8 Q. During the course of time that you
9 treated with Dr. Hausknecht did he ever send
10 you for any type of an MRI?

11 A. I'm not sure.

12 Q. After you began treatment with Dr.
13 Hausknecht, do you recall whether or not,
14 regardless of whether he sent you or someone
15 else, you had an MRI taken of your neck?

16 A. I'm not sure.

17 Q. Do you recall if you had an MRI taken
18 of your head after you started seeing Dr.
19 Hausknecht?

20 A. I think I did.

21 Q. Do you recall where that MRI was
22 taken?

23 A. I think it was at Middletown Imaging.

24 Q. Did anyone, including Dr. Hausknecht,
25 ever discuss the results of the MRI of your

1 Moore

2 head?

3 A. If he did, I don't remember.

4 Q. Other than Dr. Hausknecht, do you
5 recall discussing the results of those MRIs
6 with anyone else?

7 A. No.

8 Q. With regard to your occupation as an
9 ironworker did you have a union title, such
10 as journeyman?

11 A. Yes.

12 Q. Were you a journeyman ironworker on
13 the day of the accident?

14 A. Yes.

15 Q. At anytime prior to the date of the
16 accident had you ever worked as a foreman on
17 any job?

18 A. No.

19 (Continued on next page.)

20

21

22

23

24

25

1 Moore

2 Q. With regard to your local and with
3 regard to pay scale were foremen paid more
4 than journeymen in terms of hourly rates?

5 A. Yes.

6 MR. VERAS: I have nothing
7 further.

8 (Time noted: 1:20 p.m.)

9

10

11

12

JOHN MOORE

13

14

15 Subscribed and sworn to before me
16 this day of 2006.

17

18

Notary Public

20

21

22

23

24

25

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INFORMATION/DOCUMENTS REQUESTED

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DESCRIPTION

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10

Production of an authorization
for A-Team or whatever the
precise name for that clinic is
called

11

12

10

Production of an authorization
for Dr. Gornish's records

13

14

17

Production of Bob's last name,
who was one of the gentleman in
the crew that Plaintiff was
working with on the day of his
accident

15

16

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Production of an authorization
for Middletown Imaging

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Production of an authorization
for the psychologist named
Marie who treated the Plaintiff

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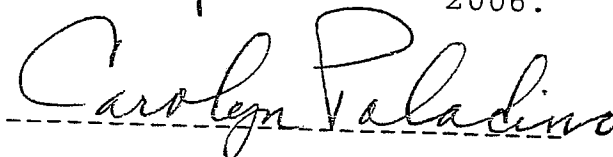
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I, CAROLYN PALADINO, hereby certify
that the Examination Before Trial of JOHN
MOORE was held before me on the 15th day of
September, 2006; that said witness was duly
sworn before the commencement of his
testimony; that the testimony was taken
stenographically by myself and then
transcribed by myself; that the party was
represented by counsel as appears herein;

That the within transcript is a true
record of the Examination Before Trial of
said witness;

That I am not connected by blood or
marriage with any of the parties; that I am
not interested directly or indirectly in the
outcome of this matter; that I am not in the
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set
my hand this 19th of Sept 2006.



CAROLYN PALADINO

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ERRATA_SHEET

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JOHN MOORE
2004 PI 020981
015-220

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In the Matter of the Claim of:

JOHN MOORE,

Claimant,

-against-

THE CITY OF NEW YORK,

Respondent.

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61 Broadway
New York, New York

December 9, 2004
3:30 P.M.

50-h HEARING of JOHN MOORE, the Claimant herein,
taken by the attorney for the Respondent, pursuant to
Section 50(h) of the General Municipal Law, held at the
above-noted time and place before a Notary Public of
the State of New York.

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A P P E A R A N C E S:

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BY: CASEY McARDLE, ESQ.
BLA NO.: 2004 PI 02981

1 JOHN MOORE,

2 The witness herein, having first been duly sworn
3 by Joseph J. Pontillo, a Notary Public in and for the
4 State of New York, was examined and testified as
5 follows:

6 DIRECT EXAMINATION BY CASEY McARDLE, ESQ.:

7 Q State your name for the record, please.

8 A John Moore.

9 Q What is your address?

10 A 421 Walnut Street, Port Monmouth, New
11 Jersey, 07758.

12 Q Good afternoon, Mr. Moore. My name is
13 Casey Mcardle. I represent the City for this
14 hearing. I'm going to ask you some questions. If
15 you don't understand my question, please tell me or
16 your attorney before you respond. Otherwise, if you
17 respond it means you understood the question. Do
18 you understand everything so far?

19 A Yes.

20 Q What is your date of birth?

21 A 9/16/55.

22 Q What is your Social Security number?

23 A 112-48-3973.

24 Q Are you currently employed?

25 A No.

1 JOHN MOORE

2 Q What is the last time you were employed?

3 A September 16, 2004.

4 Q Is that your birthday?

5 A Yes.

6 Q Where were you employed at that time?

7 A Saint George's Terminal in Staten Island.

8 Q Who was your employer?

9 A A.J. McNulty.

10 Q What is A.J. McNulty in the business of?

11 A Iron work.

12 Q What did you do for them?

13 A Erection.

14 Q Did you have other job duties there?

15 A Just erection.

16 Q Erection of what?

17 A Iron.

18 Q How long did work there?

19 A Four days.

20 Q How long did you work for A.J. McNulty
21 before 9/16/04?

22 A I hadn't worked for them in years.

23 Q When was the last time you worked before
24 you worked for several days for A.J. McNulty at that
25 location?

1 JOHN MOORE

2 A A week or so.

3 Q Where was the last location you worked
4 before that?

5 A The Sloan-Kettering Building for Cornell
6 Iron Works.

7 Q How long did you work with them?

8 A Six months.

9 Q Are you a member of a union?

10 A Local 40.

11 Q Prior to the work that you did at
12 Sloan-Kettering with Cornell, where did work before
13 that?

14 A To be honest, I don't recall.

15 Q Were you working regularly before that?

16 A Yes, I have been for twenty-five years.

17 Q Who do you live with?

18 A My girlfriend and my son and her children.

19 Q What is your girlfriend's name?

20 A Susan Catapano.

21 Q What is you son's name that you live with?

22 A Michael Moore.

23 Q What are the other children's names that
24 you live with?

25 A Catarina, Jessica and Jimmy.

1 JOHN MOORE

2 Q What are their ages?

3 A They are fourteen, eighteen and twenty.

4 Q Do you live with anybody else?

5 A No.

6 Q How long have you lived at your present
7 address?

8 A Six years.

9 Q Where did you live immediately before
10 that?

11 A Westchester County, Dobb's Ferry.

12 Q How long did you live there?

13 A About ten or eleven years.

14 Q Have you ever been legally married?

15 A Yes.

16 Q Who were you married to?

17 A Caroline Kidney.

18 Q Is that the only person that you have been
19 married to?

20 A Yes.

21 Q Are you currently married, separated,
22 divorced or something else?

23 A No.

24 Q What are you?

25 A We are engaged.

1 JOHN MOORE

2 Q Who are you engaged to?

3 A Susan Catapano.

4 Q What is your martial status?

5 A I'm engaged.

6 MR. DIAMOND: She means to Caroline.

7 A I have been divorced for fifteen years.

8 Q Were you involved in an accident that took
9 place sometime this year?

10 A Yes.

11 Q What was the date of the accident?

12 A 9/16/04.

13 Q Where did it occur?

14 A Staten Island at the Saint George's Ferry
15 Terminal.

16 Q How many terminals are there for the ferry
17 there?

18 A I don't know.

19 Q Do you know how to identify with more
20 specificity where exactly you were when the accident
21 happened at the Saint George's Terminal on Staten
22 Island?

23 MR. DIAMOND: What were you working on?
24 Describe the structure.

25 A We were putting a beam in. It was an

1 JOHN MOORE

2 addition in a renovation. I'm not sure what you're
3 looking for.

4 Q You said you were at the Saint George's
5 Terminal at the Staten Island Ferry.

6 A Yes.

7 Q How big is the Saint George's Terminal at
8 the Staten Island Ferry?

9 A Five blocks wide, about two or three blocks
10 from the water to the street.

11 Q What part of it specifically were you at
12 when your accident happened?

13 A I don't know.

14 MR. DIAMOND: She means were you working
15 at the building? Is there any way to pinpoint
16 what you were working on so she can get an
17 understanding of where.

18 A We were building a new terminal, I think.

19 Q Were there any markings or designations
20 that said exactly where you were at the terminal at
21 the time of your accident?

22 A No.

23 Q Was there a building near you?

24 A Yes, there was, a couple of a hundred feet
25 away. It was also a new addition.

1 JOHN MOORE

2 Q Were you outside at the time?

3 A Yes.

4 Q Do you know the name of the building that
5 was a couple of hundred feet away?

6 A No.

7 Q Do you know the number or street address
8 to that building, if there is one?

9 A No. When I was sent from the union hall
10 it was just Saint George's Terminal at the Staten
11 Island Ferry.

12 Q Do you know what that building that was a
13 couple of hundred feet away from where your accident
14 happened housed? What was inside that building?
15 What was the building used for?

16 A No, I don't know. I imagine it was for
17 buses. There was a lot of buses that waited for the
18 people to come off the ferry. We were working about
19 twenty feet away from a ramp that exited the terminal
20 into the street.

21 Q Into what street?

22 A I don't know. I'm not familiar with
23 Staten Island. I don't know the name of the blocks.

24 Q Do you recall seeing any structures across
25 the street from where you were working.

1 JOHN MOORE

2 A On the other side of the street, yes.

3 There was a big structure there. I don't know if it
4 was a post office or a library.

5 Q Maybe a courthouse.

6 A Yes.

7 Q How far were you from the sidewalk of the
8 street?

9 A A quarter mile.

10 MR. DIAMOND: Off the record.

11 (Whereupon, a discussion was held off
12 the record.)

13 Q How high up were you from ground level at
14 the time of your accident?

15 A From ground, I was one floor.

16 Q Can you estimate how many feet you were
17 from ground level at the place you were at the time
18 the accident happened?

19 A Ten or twelve feet.

20 Q What were you resting your body on at the
21 time?

22 A I wasn't resting it on anything. I was
23 helping push a beam.

24 Q Were you standing on something?

25 A I was on cinder blocks that were right

1 JOHN MOORE

2 next to an elevator shaft that went down two
3 subbasement levels in addition to one floor above
4 the ground and it wasn't closed off.

5 Q What do you mean closed off, closed off
6 from what?

7 A Whenever I work in a building, if there is
8 an existing elevator shaft, whether it's operable or
9 inoperable, if it has no doors on it, it has to have
10 safety so someone doesn't just walk into the elevator
11 shaft.

12 Q Did you make a comment about that to anyone
13 before your accident?

14 A All of us were commenting on it.

15 Q Who is "us" that you are referring to?

16 A The guys that I was working with.

17 Q What are their names?

18 A The only guys I remember are Jim Sullivan
19 and Michael Greco.

20 Q Do you know who Jim Sullivan worked for at
21 the time?

22 A A.J. McNulty.

23 Q Do you know who Michael Greco worked for
24 at the time?

25 A A.J. McNulty.

1 JOHN MOORE

2 Q Do you know where they work now?

3 A No. I haven't been in contact with
4 anybody since I fell.

5 Q Was the elevator shaft involved in your
6 accident?

7 A Yes.

8 Q What is the first thing that happened in
9 the accident?

10 A I reached up to push the beam in, to help
11 the connectors to push the beam in and I fell
12 backwards down the shaft.

13 Q What were you pushing the beam into?

14 A The existing building that was there. We
15 were adding onto it. We were having a problem with
16 it and the crane was holding the beam. I imagine it
17 was about a three thousand pound beam.

18 Q Was the beam you were trying to push into
19 the building several thousand pounds?

20 MR. DIAMOND: Note my objection to the
21 form, you can answer.

22 A I imagine it was a couple of thousand
23 pounds.

24 Q Had you ever pushed a beam of that weight
25 prior to the accident?

1 JOHN MOORE

2 MR. DIAMOND: Over objection, you can
3 answer.

4 A Yes, when it's suspend in the air by a
5 crane it gives it a swing where you are not actually
6 pushing the whole weight of the beam itself. You're
7 trying to guide it in.

8 Q Was anybody else pushing simultaneously
9 with you?

10 A Yes.

11 Q Who else?

12 A Bob, I don't know his last name.

13 Q Did you speak to Bob before you began
14 pushing the beam about the manner in which you were
15 going to push the beam?

16 A Yes. We understood we were going push it
17 to the connector so he could make his bolts.

18 Q How did you understand that?

19 A How do I know that I understood that?

20 Q Yes, and he understood that.

21 A We had been doing it for years.

22 Q Had you worked with him prior to the
23 accident?

24 A Yes.

25 Q What caused you to fall backwards in the

1 JOHN MOORE

2 accident?

3 A The concrete I was standing on, the cinder
4 block shaft, it busted up.

5 Q At the time of the accident, were you in
6 an upright position?

7 A Yes.

8 Q When you say the cinder block busted up,
9 what do you mean by that?

10 A It broke off.

11 Q Broke off from what?

12 A From the existing foundation that it was
13 supposed to have been chopped out of, but it
14 evidently wasn't. It was --

15 MR. DIAMOND: Where did it break off
16 from, is her question.

17 A The foundation.

18 Q Can you describe the foundation that you
19 are referring to?

20 A The wall of the elevator shaft.

21 Q In the place where you were standing on
22 the cinder block, at the time that you pushed the
23 beam, were you in the elevator shaft?

24 A No, I was standing on the threshold of the
25 elevator shaft.

1 JOHN MOORE

2 Q How many feet were you from the elevator
3 shaft at that time or any other measurement?

4 A A foot or two feet, maybe.

5 Q Where was that, in front of you, to the
6 left, right or something else?

7 A Behind me.

8 Q Did you notice that the elevator was not
9 blocked off?

10 MS. MCARDLE: I don't want to
11 mischaracterize the term that he used.

12 MR. DIAMOND: That's okay, I appreciate
13 that. Off the record.

14 (Whereupon, a discussion was held off the
15 record.)

16 Q I'll rephrase. At the time of your
17 accident, were you aware that there was nothing
18 between where you were standing and the elevator
19 shaft?

20 MR. DIAMOND: Over objection to form, you
21 can answer. Do you understand the question?

22 THE WITNESS: No.

23 Q Was there anything between behind you and
24 the elevator shaft when the accident happened?

25 A No.

1 JOHN MOORE

2 Q Were you aware of that before the accident
3 happened?

4 A Yes.

5 Q Was the movement of the beam the cause of
6 you falling backward?

7 MR. DIAMOND: I'll object to the form.

8 Can you rephrase the question.

9 Q Are you aware of whether the movement of
10 the beam caused you to fall backward?

11 MR. DIAMOND: Did it contribute, aside
12 from what he already testified to, about the
13 breaking of the cinder block?

14 Q Aside from what you already testified to.

15 A No.

16 Q Do you know what happened to the beam when
17 you fell?

18 A No, I was unconscious.

19 Q For how long?

20 A From what I understand, a half hour or so.

21 Q Do you know what you landed on?

22 A The concrete.

23 Q Do you recall landing?

24 A No.

25 Q What is the last thing that you remember

1 JOHN MOORE

2 in the accident?

3 A The concrete breaking off and me grasping
4 for something so I wouldn't fall.

5 Q Did you grasp for something?

6 A I tried to grasp for something.

7 Q Do you know what you were grasping for?

8 A Anything.

9 Q Did you come in contact with anything while
10 you were attempting to grasp for something?

11 A I must have, because I shattered my arm.

12 Q Which arm?

13 A My right arm.

14 Q Aside from the injury to your right arm,
15 did you injure any other part of your body in the
16 accident?

17 A My shoulder, my neck, my back, my head, my
18 knees, my ankles.

19 Q Which shoulder?

20 A My right shoulder.

21 Q What injury did you sustain to your right
22 shoulder?

23 A I'm waiting for an MRI. They believe it's
24 a torn rotator cuff.

25 Q Aside from what you described about the

1 JOHN MOORE

2 shattering injury to your right arm, were you given a
3 diagnosis of the injury to your right arm following
4 the incident by a medical practitioner of some kind?

5 A After the x-rays?

6 MR. DIAMOND: At any time, has any one
7 diagnosed your injury other than what you
8 said about it being shattered?

9 A Of my arm and shoulder or just my arm?

10 Q Just the right arm.

11 A I broke off a piece of the elbow and it
12 floated down into my forearm. They had to
13 subsequently retrieve the bone within the forearm.

14 After I had the operation, I was in a cast
15 which I just got off about ten days ago.

16 Q Was any surgery performed to your right
17 elbow?

18 A Yes.

19 Q What surgery was performed to your right
20 elbow?

21 A Replacing the chip. You have a point on
22 your elbow, I no longer have a point on my elbow.

23 Q Do you know what it was replaced with?

24 A No.

25 Q Can you indicate the place on the forearm

1 JOHN MOORE

2 where the chip fell to from your elbow.

3 A Somewhere in here. (Indicating)

4 MR. DIAMOND: Indicating the outside
5 portion of the right arm between the elbow
6 and the wrist, closer to the elbow.

7 MS. McARDLE: Would you say about two
8 inches below the elbow?

9 MR. DIAMOND: I would say about six
10 inches below the elbow, almost between the
11 wrist and the elbow.

12 MS. McARDLE: I'd say four.

13 Q Now you're pointing to a lower place.

14 A The pain is all in here. (Indicating)

15 MR. DIAMOND: John, the purpose of this
16 question, as far as you understood, point to
17 the spot on your arm, without moving your
18 finger, where you understood the chip fracture
19 traveled to.

20 MS. McARDLE: Now it's six inches.

21 Q Do you have a scar on your right arm as a
22 result?

23 A Yes.

24 Q Can you describe the scar?

25 MR. DIAMOND: Describe it, don't point.

1 JOHN MOORE

2 What does it look like to you, size, shape?

3 A It's about four inches. I no longer have
4 a point in the elbow.

5 MR. DIAMOND: Just talk about the scar,
6 it's four inches. Is there anything else
7 about it?

8 MS. McARDLE: That's part of the scar.

9 Q Go ahead.

10 A It's dented, I can't lift anything with the
11 right arm. I'm right handed.

12 Q Did you ever injure your right arm before
13 this accident?

14 A No.

15 Q When you testified earlier you had a
16 shatter injury to your right arm, is that what you
17 meant, the part of the right elbow that broke off?

18 A Yes.

19 Q Aside from that, are you aware of any
20 other injury to your right arm?

21 A No.

22 Q Are you required to undergo any future
23 surgery to the right arm that you are aware of?

24 A Not that I'm aware of yet.

25 Q Is that the only surgery that you have

JOHN MOORE

undergone in connection with this accident?

A So far.

Q Are you scheduled to have any more in the future?

A My rotator cuff and my shoulder.

Q When is that scheduled for?

A We are waiting on the MRI.

MR. DIAMOND: Off the record.

(Whereupon, a discussion was held off the record.)

Q What injuries did you sustain to your neck?

A We're waiting for the MRI on that as well. He believes from the x-ray that I cracked a vertebra in my neck.

Q Did you ever injure your neck before this accident?

A No.

Q Did you ever injure your right shoulder before this accident?

A No.

Q Did you ever have an MRI to your right shoulder before this accident?

A No.

1 JOHN MOORE

2 Q Did you ever have an MRI to your neck
3 before this accident?

4 A No.

5 Q What injuries did you sustain to your back,
6 aside from what you just testified to, about the
7 vertebra?

8 A The lower back down here. I guess where
9 the disks, I imagine are. (Indicating)

10 Q What disks are you referring to?

11 A Right here. (Indicating)

12 MR. DIAMOND: Do you know the numbers?

13 Q There are disks throughout your spine.

14 A I don't know.

15 Q Are you talking about disks that a doctor
16 has pointed out to you as being part of an injury?

17 A I'm not trying to be difficult, but I have
18 had a problem since I hit my head retaining
19 information.

20 My girlfriend works and she can't come to
21 the doctor with me. The only time she came was to
22 the neurologist. Unless I write it down, what they
23 are saying to me, I don't retain a lot of the
24 information that they are saying.

25 Q Do you recall anything about the injuries

1 JOHN MOORE

2 that you were told you sustained to your back in the
3 accident, aside from that it is the lower level of
4 your back and it involves disks?

5 A Just that my whole back was black and
6 blue.

7 Q What injury did you sustain to your head
8 in this accident?

9 A I had a cut back here, I was unconscious.
10 (Indicating)

11 Q Are you indicating the back of your head?

12 A Yes. I was unconscious for a while.

13 Q Can you describe the size of the cut?

14 A Two and a half to three inches. I'm just
15 guessing.

16 Q Did you have stitches to the back of the
17 head?

18 A Yes.

19 Q Do you know how many?

20 A About six or seven.

21 Q What injuries did you sustain to your
22 knees in the accident?

23 A Nothing showed up on the x-rays, but I
24 have to wear those pull up knee things now.

25 Q Do you know what they are for?

1 JOHN MOORE

2 A I wear them for support so I'm not limping
3 around.

4 Q Were they prescribed?

5 A No.

6 Q Have you received treatment to the knees
7 in connection with this accident?

8 A No. I've been doing physical therapy for
9 my back.

10 Q What about the knees?

11 A Nothing showed up on the x-rays, so I
12 haven't. There is no visual thing, but I experience
13 pain.

14 Q Have you talked to a doctor or a medical
15 practitioner about the pain in your knees?

16 A Yes.

17 Q Who have you spoken to about that?

18 A The orthopedic surgeon that is working on
19 my shoulder and elbow.

20 Q What is his or her name?

21 A Dr. Touliopoulos.

22 Q What did Dr. Touliopoulos tell you about
23 the condition of your knees?

24 A He said it's probably connected to the
25 fall.

1 JOHN MOORE

2 Q Were you ever given a diagnosis about the
3 knees following the accident?

4 A No.

5 Q Did you receive any physical therapy to
6 the knees?

7 A Yes, I do light exercises at physical
8 therapy for the knees.

9 Q Where do you go for physical therapy?

10 A Holmdel, New Jersey.

11 Q What is the name of the facility?

12 A Procure Rehabilitation Services.

13 Q Do you know the street address?

14 A Highway 35. I don't know the exact number.
15 I know how to get there by landmarks.

16 Q Did you suffer any cognitive injuries that
17 you are aware of?

18 A What is cognitive.

19 Q Thinking.

20 A Yeah.

21 Q Were you told by a medical practitioner of
22 some kind that you had suffered cognitive injuries
23 in this accident?

24 A I have only seen the neurologist twice.

25 Q What is that person's name?

1 JOHN MOORE

2 A Dr. Hausknecht.

3 MR. DIAMOND: By Counsel, that's

4 H-A-U-S-K-N-E-C-H-T.

5 Q Do you know where Dr. Hausknecht's office
6 is located?

7 A No. I think on 39th Street in Manhattan
8 near 5th Avenue or Park Avenue.

9 Q Do you know Dr. Hausknecht's first name.

10 A No, I don't.

11 MR. DIAMOND: By Counsel, Aric, A-R-I-C.

12 Q What did Dr. Hausknecht tell you about your
13 condition?

14 A That the pain in my head and the ringing
15 in my ears and the blurred vision and me forgetting
16 things during a conversation, is probably a result of
17 the fall.

18 Q What sort of things do you forget, except
19 what you have testified to?

20 MR. DIAMOND: Let me object to that.

21 I don't know if that is a fairly phrased
22 question. You are asking him to remember
23 what he forgot.

24 Q What brought to your attention that you
25 had the forgetfulness that you spoke to Dr.

1 JOHN MOORE

2 Hausknecht about following the accident?

3 A In conversations with my girlfriend, I was
4 losing my trend of thought in the middle of a
5 conversation. This was the cause of a little bit of
6 a rift because it was frustrating for her. I wasn't
7 consciously trying to forget what we were talking
8 about.

9 My son would say things, like you're
10 supposed to take me to practice today and I'd say,
11 you never mentioned it to me.

12 Q How old is your son?

13 A He'll be ten in February.

14 Q Do you have partial custody or full custody
15 of him?

16 A It's partial custody but I have full
17 physical custody. He lives with me. He gets to
18 visit his grandmother on the maternal side once
19 every couple of weeks. I have full physical
20 custody. I have him in school, I pay for all the
21 bills.

22 Q What injuries did you sustain to your
23 ankles in the accident?

24 A Nothing was revealed on the x-rays, but to
25 support myself walking, I have to wear these things.

1 JOHN MOORE

2 (Indicating)

3 MR. DIAMOND: Indicating an ace bandage.

4 Q Do you know what happened to your ankles
5 in the accident?

6 A No, I don't remember a whole lot about the
7 accident.

8 Q Were there any markings on your ankles
9 after the accident?

10 A No.

11 Q Were there any markings on your knees
12 after the accident?

13 A No.

14 Q Was there any kind of markings on your
15 right shoulder after the accident?

16 A Black and blue and scrapes.

17 Q Do you know what your shoulder came in
18 contact with in the accident?

19 A No.

20 Q What time of day was the accident?

21 A In the morning.

22 Q Can you be more specific?

23 A It was, I guess, around eight or nine in
24 the morning. We start at seven. It was pretty much
25 one of the first things we did that day.

1 JOHN MOORE

2 Q What was weather like at the time?

3 A A little cloudy, I think.

4 Q Was there anything overhead of you at the
5 place where the accident happened?

6 MR. DIAMOND: Do you mean covering him?

7 Q Anything overhead except for the sky?

8 A The boom of the crane.

9 Q How high overhead was it?

10 A Do you want me to guess?

11 MR. DIAMOND: No.

12 Q Approximately, don't guess.

13 MR. DIAMOND: If you can, give an
14 estimate. If you cannot, don't guess.

15 A Not really.

16 Q Where was the crane itself in relation to
17 where you were at the time of the accident?

18 A To my right.

19 Q Was it at ground level?

20 A Yes.

21 Q Was somebody operating it?

22 A Yes.

23 Q Who was operating it?

24 A I don't remember. An operating engineer.

25 I don't remember his name.

1 JOHN MOORE

2 Q Do you have any pictures of the accident
3 site?

4 A No.

5 Q Do you know if any were taken?

6 A I don't know.

7 Q Did anyone ever tell you that they were?

8 A No.

9 Q Did anyone ever return to the site on your
10 behalf to take pictures of the accident site?

11 A I don't know. I'm not trying to be
12 difficult.

13 Q I don't think you're trying to be difficult.

14 Do you know what happened to the cinder
15 block that you were standing on at the time of the
16 accident?

17 A No.

18 Q Who was your immediate supervisor at the
19 time?

20 A I don't remember his name, it was the
21 first time I worked for him.

22 Q What did he look like?

23 A A black gentleman, close to my age, close
24 to fifty. He was out of my local but there's a
25 thousand guys in my local. I may know a hundred

1 JOHN MOORE

2 fifty. I've been in that local twenty-five years.

3 Q Do you know what caused the part of the
4 cinder block to break off in the accident?

5 A My estimation?

6 MR. DIAMOND: No, you can't guess.

7 She's asking if you know.

8 Q In your experience.

9 MR. DIAMOND: No, I object to that.

10 He's not here as an expert. He either knows
11 or doesn't. It's not an experience question.

12 Q Do you know what caused the cinder block
13 to break off in part?

14 A No.

15 Q Did you ever have a conversation with
16 anybody about what might have caused the cinder
17 block to break off, aside from conversations with
18 your attorney?

19 MR. DIAMOND: Objection to the form
20 of the question.

21 A No.

22 Q Did you hear of any complaints made about
23 that particular cinder block you were standing on at
24 the time of your accident before your accident
25 happened?

1 JOHN MOORE

2 A No.

3 Q Did you yourself complain about the cinder
4 block before the accident?

5 A It was the first time I worked in that
6 area.

7 Q Were there any indications that the cinder
8 block was about to break before your accident?

9 A No.

10 Q Did you hear any noise of any kind before
11 the accident?

12 A No.

13 Q Did you feel anything underfoot that gave
14 an indication that the cinder block was about to
15 give way in the place where you were standing?

16 A Yes, it broke off and it was too late.

17 Q What did it feel like as it was breaking
18 off?

19 A Like a snapping and crumbling. Guys had
20 been complaining for days about the fact that that
21 elevator shaft shouldn't have been erected until we
22 had the iron in there already.

23 Q Did they say why it shouldn't have been
24 erected before you had the iron in there already?

25 A Because it was in the way of us putting in

1 JOHN MOORE

2 the beams.

3 Q Do you know who erected it, the elevator
4 shaft?

5 A No, I don't know.

6 Q Is that something that A.J. McNulty would
7 do on the job?

8 A No.

9 Q Were there other contractors on the job?

10 A Yes.

11 Q What are their names?

12 A I think Skanska.

13 Q Do you know who the general contractor was
14 on the site?

15 A Skanska

16 Q How many other contractors were on the site
17 aside from Skanska and A.J. McNulty?

18 A There had to be electricians, plumbers
19 steamfitters, laborers.

20 Q Was there a site safety contractor there?

21 A I never met him.

22 Q Did you observe any safety inspectors at
23 the site?

24 A No.

25 Q Do you know which of those contractors

1 JOHN MOORE

2 would have been responsible for the erection of the
3 elevator shaft?

4 A I imagine the GC, Skanska.

5 Q Did you ever speak to anybody at Skanska
6 on that job?

7 A No.

8 Q Do you know who the foreman was for Skanska
9 on that job?

10 A No.

11 Q Did ever see any employees of the City of
12 New York on that site at any time while you were
13 working there?

14 A There were MTA bus drivers there.

15 Q Did you ever see any employees of the City
16 of New York who had some responsibility regarding the
17 construction underway there at the site while you
18 were there at the site before your accident?

19 MR. DIAMOND: Over my objection to the
20 form, you can answer, if you understand the
21 question.

22 MS. McARDLE: What is your objection?

23 MR. DIAMOND: You are assuming that he
24 would be able to recognize somebody from
25 the City that had a role regarding this project

1 JOHN MOORE

2 in some way.

3 MS. McARDLE: I'll rephrase it.

4 Q Did you ever see any employees of the City
5 of New York that you believed had some role in the
6 construction at the site before your accident
7 happened?

8 A No.

9 Q Did you ever attend any safety meetings
10 about the work performed there?

11 A No.

12 MR. DIAMOND: Note my objection to the
13 form.

14 MS. McARDLE: What is the objection?

15 MR. DIAMOND: Is assumes there were
16 meetings.

17 MS. McARDLE: There may not have been any.

18 MR. DIAMOND: You have his answer.

19 Q Do you know if safety meetings were
20 conducted at the site?

21 A I was --

22 MR. DIAMOND: Do you know, yes or no?

23 A No.

24 Q Do know what distance you fell in the
25 accident?

1 JOHN MOORE

2 MR. DIAMOND: Estimate, if you can.

3 A About twenty-five to thirty feet.

4 Q Do you know what you physically landed on?

5 A The concrete, I think.

6 Q Did you land on any objects or just flat
7 concrete?

8 A I don't know.

9 Q Do you know if you struck any objects on
10 the way down before landing?

11 MR. DIAMOND: Other than what he testified
12 to before about his arm.

13 Q Other than what you testified to about the
14 injuries you sustained to your arm.

15 A No, I don't know.

16 Q Did you speak to any eyewitnesses after
17 the accident about the accident?

18 A Yes.

19 Q Who did you speak to?

20 A Jim Sullivan.

21 Q What was your conversation with Jim
22 Sullivan about?

23 A He visited me in the hospital and he
24 basically said, I'm glad to see that you are not
25 dead. Is there anything that I can do for you?

1 JOHN MOORE

2 I wasn't interested in particulars. I'm
3 not trying to be --

4 MR. DIAMOND: You don't have to say that.

5 Q Is that the only conversation you had with
6 him?

7 A Yes.

8 Q Did you speak to anybody else that worked
9 at that job site about your accident after the
10 accident?

11 A No.

12 Q Do you know of anyone else who had an
13 accident at that job site before your accident?

14 A No.

15 Q What were you wearing at the time of the
16 accident?

17 A A hardhat, gloves construction boots.

18 MR. DIAMOND: What else, what was on
19 your body?

20 A A tool belt.

21 Q Did you have any other safety gear on at
22 the time?

23 A No.

24 Q Did you have a harness on?

25 A No, I wasn't given a harness.

1 JOHN MOORE

2 Q Did you ask for one?

3 A No.

4 Q Was anybody working with a harness at the
5 site that you were aware of?

6 A No.

7 Q Were you attached to any objects by a rope
8 or a wire?

9 A No.

10 Q Was there a scaffolding near by where you
11 were working at the time of the accident?

12 A No.

13 Q How did get up on top of the cinder block
14 before the accident?

15 A It was ground level.

16 Q How wide was the elevator shaft?

17 A Maybe eight by six.

18 MR. DIAMOND: In feet?

19 THE WITNESS: Yes.

20 Q What is the shaft made of?

21 A Concrete, cinder blocks.

22 Q What was the first thing that you remember
23 when you came to after the accident?

24 A The paramedics standing over me and a guy
25 I work with, Mike Greco, standing over me. They

1 JOHN MOORE

2 told me not to move.

3 Q Did you say anything to anyone at that
4 time?

5 A I said, I guess I took a ten count.

6 Q What does that mean?

7 A In boxing, when you get knocked out, you
8 take a ten count.

9 Q What happened after that?

10 A They put me on a board and strapped my
11 neck down. The paramedics asked me not to move.
12 They said they would get me out and I'd be okay.

13 Q Can you describe how your body felt at the
14 time that you regained consciousness?

15 A Pain.

16 Q Can you describe that?

17 A Not to be theatrical, tremendous pain in
18 the right side of my body, even in my ribs.

19 Q Are you indicating your right elbow?

20 A Yes.

21 Q Do you mean your right arm?

22 A Yes, my right arm, shoulder. I had a
23 headache, a little bit of blurred vision. My legs
24 hurt, my right hip, I was afraid.

25 Q Did anybody, before the accident, tell you

1 JOHN MOORE

2 to work in the particular location where you were
3 working before you fell?

4 A Yes, that is where the beam was going in.

5 Q Who told you to work at the particular
6 place where you were located when the accident
7 happened?

8 A The foreman.

9 Q Who was the foreman?

10 A I told you, I don't remember. All I
11 remember is it was a black fellow about my age.

12 Q Was there a supervisor on the job?

13 A I imagine.

14 Q Do you know that person's name.

15 A No.

16 Q What did the foreman say specifically about
17 you working at that location?

18 A Put the beam in and work together.

19 Q Were you given any further directions or
20 instructions on how to go about doing that from the
21 foreman?

22 A No, I don't recall.

23 Q Do you know if A.J. McNulty had a contract
24 with any entities to perform work at that location?

25 A No idea.

1 JOHN MOORE

2 Q Do you know who was responsible for the
3 contracts at A.J. McNulty?

4 A No.

5 Q After you fell in the accident, have you
6 re-injured any part of your body that was injured in
7 the accident?

8 MR. DIAMOND: Meaning in another accident.

9 A No. My right elbow tends to swell up from
10 physical therapy.

11 Q Where were you taken to from the scene?

12 A Saint Vincent's Hospital in Staten Island.

13 Q How long were you there following the
14 accident?

15 A Four days.

16 Q Did you have medical coverage for the stay
17 at the hospital?

18 A Yes.

19 Q Did you go straight home after you left the
20 hospital?

21 A Yes.

22 Q Did somebody care for you at home?

23 A Yes.

24 Q Who cared for you at home?

25 A My girlfriend's children.

1 JOHN MOORE

2 Q What does your girlfriend do for a living?

3 A She is a marketing executive and a graphic
4 web designer.

5 Q Was anyone hired to assist you at home
6 following the accident?

7 A No.

8 Q Were you confined to bed for any period of
9 time after you returned home from the hospital?

10 A Yes.

11 Q For how long?

12 A I spent a lot of time in bed and on the
13 couch. The kids would help me around the house and
14 to the dinner table.

15 Q Did you use anything to help you walk
16 during that time?

17 A The walls.

18 Q Any medical apparatus?

19 A No.

20 Q Did you have to wear any kind of medical
21 apparatus following the accident aside from what you
22 already testified to, the cast and the bandages?

23 A I had a sling.

24 Q Was that on the right arm?

25 A Yes.

1 JOHN MOORE

2 Q For how long?

3 A About six weeks.

4 Q Anything else?

5 A No.

6 Q Did you ever have to wear a back brace or
7 a neck collar?

8 A No.

9 Q When you regained consciousness, did you
10 still have your hardhat on?

11 A I don't remember.

12 Q How tall are you?

13 A About five ten and a half.

14 Q How much do you weigh?

15 A One hundred ninety pounds.

16 Q What was your weight on the day of the
17 accident?

18 A Two fifteen.

19 Q Are there any exercises or sports that you
20 did on a regular basis before the accident that you
21 are limited or can't do since the accident?

22 A Yes.

23 Q What are they?

24 A I did weight lifting, hiking, basketball,
25 running, playing football and playing basketball with

1 JOHN MOORE

2 my son.

3 Q Where would you weight lift before the
4 accident?

5 A In the local gym.

6 Q Do you have difficultly walking currently?

7 A Yes.

8 Q Can you describe it?

9 A I'm slow. After a while it starts hurting
10 my lower back on my right side by the hip over here.
11 (Indicating)

12 Q The right hip, correct?

13 A Yes. My knees bothers me, on the inside of
14 my right knee specifically and my ankle hurts.

15 Q Which ankle?

16 A My right ankle, mostly.

17 Q Is that after you walk a certain period of
18 time?

19 A It depends on the day.

20 Q How frequently did you have difficulty
21 walking in the past month?

22 A Just about everyday.

23 Q How far do you walk before you experience
24 difficulty?

25 A Some days just from the bed to the kitchen,

1 JOHN MOORE

2 about sixty feet, some days longer.

3 Q Do you take painkillers currently for your
4 pain?

5 A Yes.

6 Q What are you on right now?

7 A Vicodin and Percocet.

8 Q How long have been taking those?

9 A Since I fell.

10 Q What dosage are you taking of the Vicodin
11 currently?

12 A I take one to two every six hours.

13 Q Did you know what the dosage is?

14 A Does seven fifty sound correct?

15 Q If you are not sure, just say so.

16 A I'm not sure.

17 Q What about the Percocet?

18 A I'm not sure.

19 Q How many pills per day of the Percocet?

20 A Three.

21 Q Have you had any problems in taking either
22 of those medications?

23 A What do you mean?

24 Q Sides effects, any problem at all taking
25 them?

1 JOHN MOORE

2 A I can't drive and I can't pick my kid up
3 from school. My girlfriend has to do basically
4 everything for me in addition to taking care of her
5 own children. We are working together even though
6 she's doing most of the work.

7 Before I got hurt, I still don't drink, I
8 was pretty much a physical fitness buff. I started
9 smoking cigarettes again after almost eighteen years
10 of not smoking.

11 Q Do you have any history of alcohol
12 problems?

13 A No.

14 Q Do you have a history of drug addiction of
15 any kind?

16 A No.

17 Q Have you had any craving for the Vicodin?

18 A No.

19 Q Have you had any cravings for the
20 Percocet?

21 A No.

22 Q How much are you smoking now?

23 A A pack and a half a day.

24 Q Prior to this accident, had you ever
25 received Workers Compensation?

1 JOHN MOORE

2 A Once for a broken finger.

3 Q When was that?

4 A About three years ago.

5 Q Where were you working when you broke your
6 finger?

7 MR. DIAMOND: I'm going to object to the
8 form of the question, it's not related.

9 Q Did you injure any other part of your body
10 in the accident in which you broke your finger?

11 A No.

12 Q Are you receiving Workers Compensation at
13 this time?

14 A Disability.

15 Q Did you receive Workers Compensation, at
16 all, in connection with this accident?

17 MR. DIAMOND: Do you understand, do you
18 get Workers Comp checks?

19 Q Or did you, after the accident?

20 A Yes, I do now. I think that is what I'm
21 getting.

22 Q Do you know who is paying it?

23 A The State Insurance Fund of New York.

24 Q Have you been to a hearing for disability
25 or Workers Compensation benefits?

1 JOHN MOORE

2 A No.

3 Q Are any planned or scheduled?

4 A No.

5 Q What are you receiving currently?

6 A Four hundred dollars a week.

7 Q Is that the total?

8 A Yes, and one hundred fifty from my local.

9 Q In total, you are receiving five hundred
10 fifty per week, correct?

11 A Yes.

12 Q What were your earnings before this
13 accident?

14 A Net or gross?

15 Q Either.

16 MR. DIAMOND: What was the gross?

17 A About thirteen hundred a week.

18 Q What did you net?

19 A About eight hundred.

20 Q At the time of the accident, were you
21 enrolled in any school or taking any courses?

22 A No.

23 Q Did you have any other position of
24 employment or volunteer positions?

25 A No.

1 JOHN MOORE

2 Q Aside from what you testified to, are
3 there any hobbies that you are unable to do now
4 because of the accident?

5 A That's pretty much what I did, physical
6 fitness.

7 Q Where did you weight lift before the
8 accident?

9 A In the local gym.

10 Q What is the name of it?

11 A Study Hall.

12 Q What is the address?

13 A I don't know the specific number. It's on
14 Highway 36 in Kingsburg.

15 Q Is that in New Jersey?

16 A Yes. .

17 Q Do you have any pictures depicting how
18 your body appeared before the accident, within two or
19 three months before the accident happened?

20 A I'm not that vain.

21 Q Do you have any that exist that any family
22 or friends have?

23 A I have a picture at my sister's wedding a
24 year or two ago. I'm in a suit and you can see the
25 total difference in my mass.

1 JOHN MOORE

2 Q I'll ask that you retain that, don't
3 destroy it until this matter is resolved.

4 A It was all natural too.

5 MR. DIAMOND: We will retain it.

6 Q Do you have outstanding medical expenses
7 because of this accident?

8 A Doctors visits.

9 Q Were they paid for by an insurance
10 company?

11 A Yes.

12 Q Do you have any expenses, medical related,
13 because of the accident?

14 MR. DIAMOND: Anything out of pocket that
15 hasn't been covered?

16 A No.

17 Q Any other expenses aside from medical
18 because of the accident?

19 MR. DIAMOND: Do you understand? Anything
20 that you had to pay for that you would not
21 have, had you not been injured?

22 A Not that I can think of.

23 Q Where was Bob standing at the time of the
24 accident?

25 A Next to me.

1 JOHN MOORE

2 Q Was he also standing on the cinder block?

3 A I don't know.

4 Q Was anything resting on the cinder block
5 you were standing on aside from you and possibly
6 Bob?

7 A No.

8 Q Do you know if the cinder block that you
9 were standing on was wet or damp?

10 A No.

11 Q Do you know how long it had been there in
12 that position before your accident?

13 A No.

14 Q Do you know who placed it there?

15 A I guess --

16 MR. DIAMOND: Note my objection, you can
17 answer. Asked and answered before.

18 MS. McARDLE: It was --

19 MR. DIAMOND: He said who built the thing.

20 Q Did the general contractor put the cinder
21 block there that you were standing on?

22 A They were responsible for erecting the
23 elevator shaft and I assume that they did that.

24 Q Did you receive any directions or
25 instructions from Skanska on the day of the accident

1 JOHN MOORE

2 as to how to perform your work that day before this
3 accident happened?

4 A No.

5 Q Were you holding anything in your hand at
6 the time of the accident?

7 MR. DIAMOND: Other than pushing the beam?

8 Q Were you contacting the beam when the
9 accident happened?

10 A Yes.

11 Q Before you fell, did you step backward?

12 A I don't know.

13 Q Do you know if there are any progress photos
14 taken of the work site by any of the contractors at
15 all or anybody?

16 MR. DIAMOND: The question is, did anybody
17 take photos of the job that you know of?

18 MS. McARDLE: Progress.

19 MR. DIAMOND: I know, but I didn't think
20 he would know if they were necessarily
21 progress photos.

22 A No.

23 Q Were you on any medication at the time of
24 the accident?

25 A No.

1 JOHN MOORE

2 Q Do you wear glasses or contacts?

3 A No.

4 Q When is last time that you had your eyes
5 examined?

6 A I can't remember.

7 Q Did you consume any drugs, alcohol or
8 intoxicating substances within twenty-four hours of
9 the accident happening?

10 A Absolutely not.

11 Q On the days prior to the accident that you
12 worked at that job site, had you ever stood on that
13 particular cinder block before?

14 A No.

15 Q Did you see anybody else standing on it
16 before you stood on it and your accident happened?

17 A No.

18 Q Aside from you and Bob, who else was
19 working to put the beam in place at the time?

20 A Mike Greco and the other guy. I don't
21 remember his name.

22 Q Were four people in total working to put
23 the beam in place at the time?

24 A Yes.

25 Q Does that include the crane operator?

1 JOHN MOORE

2 A No.

3 Q So it was is five people, correct?

4 A Yes.

5 Q What was Mike doing to put the beam in
6 place at the time of your accident?

7 A We were all just trying to fit the beam
8 into the slot.

9 Q Did you notice any barricades or
10 obstructions at all in the vicinity of where the
11 accident happened?

12 A No.

13 Q Were there any signs posted in the area?

14 A No.

15 Q Where was Michael standing when your
16 accident happened, if he was standing?

17 A I don't know.

18 Q Did you see him right before you fell?

19 A I was looking at the other connector.

20 Q The what?

21 MR. DIAMOND: The other connector. That
22 is his title.

23 Q Is Mike a connector?

24 A He was on that job.

25 Q Where was the other connector located when

1 JOHN MOORE

2 your accident happened?

3 A Up on the beam.

4 Q Was Mike on the cinder block that you were
5 on when the accident happened?

6 A No.

7 Q Was Mike on the beam?

8 A Yes.

9 Q Did Mike know where you were located when
10 your accident happened?

11 MR. DIAMOND: Objection, don't answer.

12 Q Do you know if Mike was where you were
13 when the accident happened?

14 MR. DIAMOND: Objection, don't answer.

15 Just rephrase.

16 Q Within the period of time that you were
17 standing on the cinder block before you fell, did
18 you have a conversation with Mike?

19 A No.

20 Q During the time that you were on the
21 cinder block before you fell that day, did you have
22 a conversation with the other connector?

23 A I really don't remember.

24 Q Did you fill out a written report for your
25 employer about the accident?

1 JOHN MOORE

2 A I was in the hospital.

3 Q What treatment did you receive in the
4 hospital?

5 A Surgery on my right elbow. They took
6 x-rays of my head and I was in the trauma unit for a
7 couple of hours.

8 Q Did you learn the results the x-rays to
9 your head?

10 A A severe concussion.

11 Q Do you plan on returning to work in the
12 future?

13 MR. DIAMOND: Note my objection to the
14 form. You can answer over my objection.

15 A That is the only thing that I know how to
16 do.

17 Q Have you spoken to a doctor about whether
18 you will be physically able to return to work in the
19 future?

20 A He said there is a possibility, but being
21 that I have to use both of my arms, I might not have
22 full effect in my right arm.

23 Q Aside from the medical providers and the
24 facilities that you have testified to already, did
25 you treat anywhere else in connection with the

1 JOHN MOORE

2 accident?

3 A What do you mean?

4 Q Did you go anyplace else for treatment,
5 examinations or testing, aside from the people and
6 the places that you have testified to already?

7 A No.

8 Q Besides what you testified to about the
9 condition of the elevator shaft when your accident
10 happened, did you observe any other safety concerns
11 with the work site before your accident?

12 MR. DIAMOND: Object to the form of the
13 question.

14 MS. McARDLE: What is the objection.

15 MR. DIAMOND: First of all, it's so
16 incredibly broad, I don't know what you mean.
17 More importantly, he's not a safety inspector.

18 He took a fall into an elevator shaft and
19 that is what this case is about and this is a
20 50-H Hearing about that accident. Anything
21 else is way above and beyond what is
22 permissible.

23 Q Were you and the other employees at the
24 site complaining about anything else on the job
25 before your accident?

1 JOHN MOORE

2 A No.

3 Q Do you know if anyone said anything to the
4 foreman at A.J. McNulty about the condition of the
5 elevator shaft before your accident happened?

6 A I don't know.

7 Q Have you ever received welfare or public
8 assistance?

9 A No.

10 Q Have you ever received SSI?

11 A No.

12 Q Have you ever received Social Security
13 disability?

14 A No.

15 Q Have you received Section Eight or
16 subsidized housing?

17 A No.

18 Q Have you ever been convicted of a crime?

19 A No.

20 Q Have you been known by any other name aside
21 from John Moore.

22 A No.

23 Q Does the City of New York hold any
24 judgments or liens against you for any reason, such
25 as parking violations or fines?

1 JOHN MOORE

2 A Not that I know of.

3 Q Do you hold any professional licenses?

4 A Journeyman Iron Worker.

5 MS. McARDLE: Counsel, are you pursuing
6 this matter against any private parties?

7 MR. DIAMOND: We are not sure yet.

8 MS. McARDLE: Are you willing to have your
9 client examined by a doctor for the City?

10 MR. DIAMOND: Yes.

11 Q Mr Moore, have you ever worked for the City
12 of New York?

13 A No.

14 Q Does your ex-wife have custodial rights of
15 your son?

16 A My ten year old?

17 Q Yes.

18 A It's not her child.

19 Q Does the mother of your ten year old child
20 have custodial rights over your son?

21 A No.

22 Q Has your relationship with your family
23 members and significant other been affected by the
24 incident?

25 A Yes.

1 JOHN MOORE

2 Q How, aside from what you have testified to
3 already?

4 A What did I testify to?

5 MR. DIAMOND: Just explain how, if you
6 want to, how have relationships with other
7 people been affected by this?

8 Q If you repeat yourself, it's not a problem.

9 A I can't take my son to the park. I can't
10 play basketball with him. I can't wrestle around
11 the house with him. My girlfriend's oldest son, I
12 used play basketball and go hiking with him sometimes.
13 I can't do any of those things.

14 Q Okay.

15 A I'm not very attentive to my girlfriend as
16 I used to be, whether it be physically, mentally or
17 emotionally. I have become very self-absorbed. I
18 don't know if that is viable or not.

19 Q Is there anything else that you can think
20 of?

21 A No.

22 Q Is there a wedding date planned at this
23 time?

24 A No.

25 Q Have you gone for any kind of therapy or

1 JOHN MOORE

2 counseling in connection with the accident?

3 A No, but the neurologist suggested that I
4 might have some problem mentally with the trauma to
5 my head. He hasn't elaborated any further than
6 that.

7 Q Are you the sole provider of your ten year
8 old son?

9 A Yes.

10 Q Do you have any other dependants?

11 A No.

12 Q Have you ever sued the City of New York
13 before, including on anyone's behalf, such as your
14 children?

15 A No.

16 Q Did you have any private insurance at the
17 time of the accident?

18 A Through my union.

19 Q What kind of insurance?

20 A I have Empire Blue Cross for
21 hospitalization, Magna Care for doctor office visits
22 and for dental.

23 Q Did you have any private disability
24 insurance?

25 A No.

1 JOHN MOORE

2 Q Do you have any photographs showing how
3 your injuries appeared right after the accident?

4 A No, I don't.

5 MS. McARDLE: Counsel, will you provide
6 medical authorizations here today?

7 MR. DIAMOND: We won't provide them here
8 today, but we will respond to the request.

9 MS. McARDLE: Please, include the claim
10 number on any responses that you make and
11 forward them directly to the Comptroller's
12 Office.

13 (Continued on the next page to include the
14 jurat and signature line.)

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JOHN MOORE

2

MR. DIAMOND: Okay.

3

MS. McARDLE: Thank you, nothing further.

4

(Whereupon, the examination of

5

this witness was concluded at 5:00 p.m.)

6

7

I have read the foregoing record of my

8

testimony taken at the time and place noted in the

9

heading hereof and I do hereby acknowledge it to be

10

a true and correct transcript of the same.

11

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JOHN MOORE

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Subscribed and sworn to

17

before me on this _____ day

18

of _____, 2004.

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NOTARY PUBLIC

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2 CERTIFICATION

3

4 I, Joseph J. Pontillo, a Notary Public of
5 the State of New York do hereby certify:

6 That the testimony in the within hearing
7 was held before me at the aforesaid time and place.

8 That said witness was duly sworn before the
9 commencement of the testimony, and that the testimony
10 was taken stenographically by me then transcribed under
11 my supervision, and that the within transcript is a
12 true record of the testimony of said witness.

13 I further certify that I am not related to
14 any of the parties to this action by blood or marriage,
15 that I am not interested directly or indirectly in the
16 matter in controversy, nor am I in the employ of any of
17 the counsel.

18

19 IN WITNESS HEREOF, I have hereunto set my
20 hand this 21 day of Dec, 2004.

21

22



23

JOSEPH J. PONTILLO

24

25